

JUL 30 1971

E. ROBERT SCAYER, CLERK

APPENDIX

In The

Supreme Court of the United States

Comm. v. Amoco, 2000 / 1971

No. 79-5129

MITCHILL, EPPS, ET AL.,

Appellants,

—v.—

AMOCO V. CONTINENTAL, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

FILED APRIL 24, 1971

PROGRAM JURISDICTION NOTED MAY 24, 1971

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1970

---

—No. 70-5138

MITCHELL EPPS, ET AL.,

*Appellants,*

—v.—

AMERICO V. CORTESE, ET AL.,

*Appellees.*

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

---

I N D E X

	Page
Record from the United States District Court for the Eastern District of Pennsylvania	
Docket entries	1
Complaint filed September 18, 1970	6
Exhibit A—Writ served on Epps	15
Exhibit B—Writ served on Parham	17
Exhibit C—Writ served on Washington	19
Motion for temporary restraining order filed September 18, 1970	21
Motion to convene three judge District Court filed Sep- tember 18, 1970	24
Order dated September 18, 1970	25

Record from the United States District Court for the Eastern  
District of Pennsylvania—Continued

Transcript of hearing of Lewis Washington re temporary restraining order, held September 25, 1970	26
Order dated September 25, 1970	30
Defendant, Government Employees Exchange Corporation's answer to plaintiffs' complaint filed October 9, 1970	32
Exhibit A—Retail Installment Contracts	35
Answer of Sears, Roebuck and Co. to complaint filed October 13, 1970	41
Exhibit A	53
Answer to motions for preliminary injunction filed October 13, 1970	57
Motion for summary judgment filed by Sears, Roebuck and Co. October 13, 1970	61
Plaintiffs' motion for summary judgment filed October 19, 1970	63
Plaintiffs' motion to dismiss counterclaim filed October 19, 1970	64
Plaintiffs' motion for a temporary restraining order filed October 19, 1970	65
Defendants' motion to dismiss complaint filed October 20, 1970	66
Stipulation of plaintiffs and Sears, Roebuck and Co., filed November 10, 1970	67
Exhibits A—I	71
Stipulation of plaintiffs and defendant sheriff and prothonotary filed November 10, 1970	82
Stipulation of plaintiff and GEX filed November 10, 1970	85
Opinion, Troutman, J., dated March 31, 1971	88
Order denying plaintiffs' motion for summary judgment and granting defendants' motions for summary judgment, dated March 31, 1971	105
Notice of appeal to the Supreme Court of the United States by Paul and Ellen Parham and Rosa Bell Andrews Washington, filed April 8, 1971	106
Orders granting motion for leave to proceed in forma pauperis and noting probable jurisdiction	108

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA  
BELL ANDREWS WASHINGTON, on behalf of themselves  
and all others similarly situated

*v.s.*

AMERICO V. CORTESE, ESQUIRE, individually and as Pro-  
thonotary of the Court of Common Pleas of Philadel-  
phia County; WILLIAM M. LENNOX, individually and  
as Sheriff of Philadelphia County; LEWIS WASHINGTON,  
GOVERNMENT EMPLOYEES EXCHANGE CORP., and SEARS,  
ROEBUCK AND COMPANY

*Basis of action:* Civil Rights

*Jury trial claimed by* on , 19

*For Plaintiff:*

Joel Weisberg, Esq., Community Legal Services, Inc.,  
313 S. Juniper St. 19107

*For Defendant:*

Levy Anderson, City Solicitor, for AVCortese & WM  
Lennox, 1520 Municipal Services Bldg. 19107

Shestack, Herman & Bayer for G.E.X. Corp. (19107),  
1000 Bankers Securities Bldg.

Harry L. Devoe, Esq. and Robert F. Maxwell, Esq.  
for Sears, Roebuck & Co., 4640 Roosevelt Blvd. 19132

DOCKET ENTRIES

Date	Plaintiff's Account	Received	Disbursed
Sep 70	48349	15	
Sep 21, 1970	TO U.S. TREAS.		15
8-71	54920 (Approved)	5	
12-71	Treas		5

## DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1970	
1 Sept 18	Complaint filed.
“ 18	Summons exit.
(1) “ 18	Plffs' motion for temporary restraining order, filed.
(1) “ 18	Plffs' motion to convene Three-Judge Court, filed.
— “ 18	Hearing sur Plff's petition for temporary restraining order. Partially granted. Order signed. MT
(1) “ 29	Order dtd 9/18/70 that property of Plff. Rosa Bell Washington seized by Deft. Lennox, be returned, filed. MT 9/30/70 entered and copies mailed (incl. Gov. and Att. Gen.)
— “ 25	Hearing sur Temporary Restraining Order—signed 9/18/70. Deft. L. Washington, sworn. MT Order dtd 9/18/70 is VACATED—order signed.
2 “ 29	Order dtd 9/25/70 that order dtd 9/18/70 is VACATED, filed. MT 9/30/70 entered and copies mailed (incl. Gov. & Att. Gen.)
3 Oct 5	Order dtd 10/2/70 designating Hon. J. Cullen Ganey, U.S. Circuit Hastie, Judge, and Hon. John B. Hannum, to sit with Hon. E. Mac Troutman for the hearing and determination of this case, filed. 10/6/70 entered and copies mailed (incl. Gov. & Att. Gen.)
4 “ 9	Answer of Gov. Employees Exchange Corp., and Counter-Claim, filed.

## DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS	
1970		
5 " 13	Answer of Sears, Roebuck & Co., filed.	
6 " 13	Answer of Sears, Roebuck & Co. to Motions for Preliminary Injunction, filed.	
7 " 13	Motion of Sears, Roebuck & Co. for Summary Judgment, filed.	
8 " 19	Affidavit of Albert C. Twyman re service of Summons and Complaint on Defts, filed.	
9 " 19	Plffs' Motion for Summary Judgment, filed.	
10 " 19	Plffs' Motion to dismiss Deft. Government Employees Exchange Corp.'s Counter-Claim, filed.	
11 " 19	Plffs' Motion for a preliminary injunction restraining Defts. Lennox and Cortese from further issuance and execution of writs of replevin with bond, etc., filed.	
12 " 20	Defts. Cortese & Lennox's Motion to Dismiss Complaint, filed.	
13 " 22	Plffs' Memorandum of Law in support of their Motion for preliminary injunction, filed.	
— " 22	Hearing re Preliminary Injunction. MT Counsel to submit briefs and stipulations by 11/2/70.	
	Hearing continued.	
14 Nov. 10	Stipulation of counsel for Plffs' & Sears, Roebuck & Co. as to certain transaction, filed.	
15 " 10	Stipulation of counsel re: writs of replevin with bond which are issued by Deft. Cortese, etc., filed.	

## DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS	
<b>1970</b>		
16	" 10	Stipulation of counsel re: regulation for issuance of writs of replevin and requirements for execution of same, filed.
17	" 10	Plffs' supplementary memorandum in support of motions for preliminary injunction and summary judgment, filed.
18	Dec 9	Letter dtd 11/17/70 from Jeffrey A. Ernico, Esq., Commonwealth of Pa., to Clerk of Court, re Notice to file a Brief, filed.
19	" 9	Brief of Sears, Roebuck & Co. in Support of Motion for Summary Judgment and Dismissal of action brought against it, filed.
<b>1971</b>		
—	Jan 13	Argued sur Plff's motion for Preliminary Injunction—C.A.V. Gan
20	" 27	Letter dtd 1/20/71 to Hon. E. MacTroutman re granting preliminary injunction, filed. MT
21	Mar 31	Opinion Ganey Circuit Judge, Troutman J. and Hannum J. and Order that plffs. motions for summary judgment are DENIED; that defts. motions for summary judgment are GRANTED, filed. 3-31-71 entered & notice mailed on 4-1-71
22	Apr 8	Plffs' Notice of Appeal to the Supreme Court of the United States, filed.
23	" 8	Plffs' Affidavit of Service re Notice of Appeal, filed.

**SUPPLEMENTAL DOCKET ENTRIES**

---

<b>DATE</b>	<b>FILINGS—PROCEEDINGS</b>
<b>1971</b>	
— Apr 30	Original record transmitted to Clerk, Supreme Court of the United States.
24 Jul 6	Copy of transcript of 9/25/70, filed.

[Clerk's Certificate to Foregoing Paper  
Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

COMPLAINT—CLASS ACTION—Filed September 18, 1970

1. This is a civil action brought by named and class plaintiffs to have declared unconstitutional certain statutes and rules of state-wide application which establish the procedure for the replevy of goods in the Commonwealth of Pennsylvania, under which creditors and others are permitted to obtain immediate possession of goods from those lawfully in possession thereof without the requirement of any prior hearing or of notice to those in lawful possession. Also sought are preliminary and permanent injunctions restraining the Sheriff and Prothonotary of Philadelphia from issuing writs of replevin with bond or seizing property on the authority of such writs.

#### JURISDICTION

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1343, Title 42 U.S.C. § 1983, Title 28 U.S.C. §§ 2281, 2284, and Title 28 U.S.C. § 2201 and 2202, this being an action seeking to have declared unconstitutional state statutes and rules of statewide application and an action for preliminary and permanent injunctions to redress deprivations, under color of state law, of rights, privileges, and immunities secured to plaintiffs by the United States Constitution.

3. Plaintiffs have no adequate remedy at law and will continue to suffer irreparable harm from the state procedures complained of herein unless equitable relief is accorded them as prayed for herein.

#### PARTIES—CLASS ACTION ALLEGATIONS

4. The plaintiffs are:

- (a) Mitchell Epps, a citizen of the United States and a resident of the Commonwealth of Pennsylvania with his residence at 1824 Bainbridge Street, Philadelphia, Pennsylvania.
- (b) Paul and Ellen M. Parham, citizens of the United States and residents at 611 North 54th Street, Philadelphia, Pennsylvania.
- (c) Rosa Bell Andrews Washington, a citizen of the United States and a resident at 5343 DeLancey Street, Philadelphia, Pennsylvania.
- (d) Pursuant to Fed. R. Civ. P. 23(a) and 23(b) (2)

all persons who are residents of the Commonwealth of Pennsylvania and who are or may be subject to the issuance of writs of replevin with bond by the Prothonotary of the Courts of Common Pleas of Philadelphia County and the seizure of their personal property on the authorization thereof.

5. The named plaintiffs, as individuals subject to the seizure of their property on writs of replevin with bond issued under the statute and rules here in question, fairly and adequately represent the class of plaintiffs described in paragraph 4(d) above on whose behalf they sue, and the persons constituting said class are so numerous as to make it impractical to bring them all before this Court.

6. The Defendants are:

- (a) Americo V. Cortese, Esquire, the Prothonotary of the Court of Common Pleas of Philadelphia County, who is charged with the responsibility of processing praecipes for writs of replevin and issuing said writs, and who maintains of-

fices at 288 City Hall, Philadelphia, Pennsylvania.

- (c) Lewis Washington who is employed as a deputy sheriff of Philadelphia County, and resides at 4228 West Girard Avenue, Philadelphia, Pennsylvania.
- (d) Government Employees Exchange Corp., a corporation doing business in New Jersey, with a business address at Kaign Avenue and Crescent Boulevard, Pennsauken, New Jersey.
- (e) Sears, Roebuck and Company, a New York Corporation authorized to do business in Pennsylvania on June 14, 1920, which has an official mailing address c/o C. T. Corporation Systems, 123 South Broad Street in Philadelphia and which has its principal place of business at Adams and Whitaker Avenues in Philadelphia, Pennsylvania,
- (f) and a class described as all creditors or others who instituted actions of replevin with bond and have had property seized or may have property seized by the Sheriff of Philadelphia County on the authority of such writs of replevin issued against members of the class of plaintiffs set forth in paragraph "4(d)." Said class of defendants is designated pursuant to Fed. R. Civ. P. 23(a) and 23(b) (2). The members of said class will be fairly and adequately represented by the named defendants and are so numerous as to make their joinder impractical.

#### STATEMENT OF CLAIM

7. The Commonwealth of Pennsylvania provides by statute, Act of 1705, 1 Sm. L. 44, § 12, 12 P.S. § 1821, and Act of April 19, 1901, P.L. 88, as amended, 12 P.S. §§ 1824-1845, and by rule of Court, Pa. R. Civ. Pro. 1071-1087, for the immediate seizure of personal property held in peaceful possession, on the demand of an allegedly aggrieved creditor, without the intervention of a court of law or other impartial body, and without any

prior notice of such seizure to the aggrieved individual in possession.

8. The statutes and rules in question provide for the issuance of a writ of replevin with bond by the Prothonotary of the Court of Common Pleas and the seizure of property pursuant to such writ by the Sheriff of the County merely upon the filing of a praecipe for a writ, along with a bond on the amount of double the value of the property taken. The value of such property is determined by the party seeking the seizure, Pa. R. Civ. Pro. 1073.

9. The statutes and rules in question, which require no notice prior to the service of the writ, provide that the Sheriff shall take possession of the property designated in the writ at the time of the service of said writ. Pa. R. Civ. Pro. 1074.

10. The Sheriff is required by the writ to locate the property, seize it and remove it with or without the consent of the individual in possession.

11. An individual whose peaceful possession has been disturbed may reclaim possession of his property only by the filing, within seventy-two (72) hours, of a counterbond in the same amount as that filed to initiate. Pa. R. Civ. Pro. 1076.

12. The Sheriff is required to deliver the seized property to the plaintiff on the writ if no bond is filed within the seventy-two (72) hour period. Pa. R. Civ. Pro. 1077.

13. The form of writ required by rule of Court, Pa. R. Civ. Pro. 1354, contains no notice that the plaintiff may recover his property by filing such a bond within seventy-two (72) hours, nor, in fact, does it contain any mention of such bond.

14. Should such property be immune or exempted from replevin, such claim may be raised only after seizure and removal by the filing of preliminary objections. Pa. R. Civ. Pro. 1078.

15. No complaint need be filed at the time of seizure and removal, and the individual in possession, notified by the writ that he must defend the action commenced

against him, is given notice of neither, the nature of the action against him nor its underlying cause.

*Complaint of Mitchell Epps*

16. During the past two years, Plaintiff Mitchell Epps, an employee of the federal government, made a number of purchases from Defendant Government Employees Exchange Corporation. The purchase items included a General Electric stereo, a watch, a television antenna, a carpet, and male and female wedding rings.

17. Although each of the above items require different installment payments, Defendant Government Employees Exchange Corporation consolidated them so that Plaintiff Epps was required to pay approximately \$35.00 per month for them all. In fact, Plaintiff Epps never received the carpet he purchased in early 1970 although presumably he was being charged for it as part of his monthly payments.

18. At all times since the purchase of these items, Plaintiff Epps has been making full and timely monthly payments to Defendant Government Employees Exchange Corporation. Never was he notified by the Defendant corporation that he was tardy or owing in these payments nor could he have truthfully been notified of this.

19. Nevertheless, on Friday, September 11, 1970, without any prior notice or hearing, Sheriffs Joseph DiStefanis and John DiJulio came to Plaintiff Epps' premises at 1828 Bainbridge Street, with a Writ of Replevin bonded in the sum of \$2200.00 and attempted to take all of the items mentioned above. A true and correct copy of the writ served on Plaintiff Epps is attached hereto and marked as Exhibit "A".

20. When Sheriffs DiStefanis and DiJulio came to Plaintiff Epps' premises, the only person home was Mr. Epps' wife. Surprised at the presence of these people, Mrs. Epps asked them to identify themselves, but they failed to do so. She then telephoned her husband at work who told her to call the police and wait until he came home.

21. It was not until Plaintiff Epps returned home that the sheriffs identified themselves. When Plaintiff Epps explained to them that he was current in his payments for all the items, the sheriffs indicated that this did not concern them.

22. Plaintiff Epps then called Defendant Government Employees Exchange Corporation and, in the presence of Sheriff DiStefanis, was told that he was indeed current in all his installment payments.

23. Sheriff DiStefanis, upon hearing that Plaintiff Epps was not in default on his installment payments, responded by disregarding the admissions made by Defendant Government Employees Exchange Corporation and replevied the General Electric stereo.

24. At no time prior to the taking of his stereo did Plaintiff Epps ever receive notice of the Writ of Replevin. Thus deprived of his property without due process of law, Plaintiff Epps remains aggrieved, never having had any complaint served upon him by Defendant Government Employees Corporation.

25. Furthermore, Plaintiff Epps is financially unable to meet the costs of obtaining a counterbond, which is the only means which he has of recovering his property.

*Complaint of Paul and Ellen M. Parham*

26. Plaintiffs Paul Ellen M. Parham, who are presently compelled to depend solely on grants from the Department of Public Welfare to support themselves and their child, purchased a kitchen table and two chairs and a bed from Defendant Sears, Roebuck and Company some time in February, 1969, at a total cost of approximately \$385, payment to be made in monthly installments of \$16.50.

Plaintiffs Parham duly made payments to Defendant Sears until January, 1970. At this time, Plaintiff Paul Parham lost his job.

28. Since that time, Plaintiffs Parham have made several payments, the most recent being a payment of \$20 on or about September 1, 1970.

29. On September 15, 1970, without any notice, two deputy sheriffs appeared at the Parhams' house with a truck. Only Plaintiff Ellen M. Parham was present.

30. The two men served upon Mrs. Parham a writ of replevin with bond, issued by defendant Cortese. A true and correct copy of this writ is attached hereto and marked Exhibit "B". They informed her that they were empowered to seize the table, chairs, and bed forcibly if necessary.

31. Mrs. Parham was told only that her goods would remain in the possession of the sheriff for 72 hours, and that if she wanted to discuss the replevy with anyone, she would have to contact the sheriff or Sears.

32. Therefore, Plaintiffs Parham have been deprived of their property as a result of a proceeding in which they were not able to take part, having received no notice before their property was taken.

33. Furthermore, Plaintiffs Parham are financially unable to meet the cost of obtaining a counterbond, the only means of recovering their property.

#### *Complaint of Rosa Bell Andrews Washington*

34. Plaintiff Rosa Bell Andrews Washington has filed for a divorce from her husband Defendant Lewis Washington and is awaiting the approval of the Court of a Minister's Report, filed September 1, 1970, recommending that a divorce be granted.

35. Plaintiff Washington is presently living with her two children, a girl four years of age and a boy eleven years of age, in the home of her sister Lillie Perkins at 5343 Delancey Street, Philadelphia.

36. On September 14, 1970, the Family Court Division of the Court of Common Pleas of Philadelphia County ordered Defendant Washington to provide support for his children in the sum of forty-five dollars per week.

37. On September 14, 1970, Defendant Washington, a deputy sheriff of Philadelphia County filed with defendant Cortese a praecipe for a writ of replevin with bond, along with a bond for two hundred dollars, twice the alleged value of the property to be seized.

38. During the morning hours of September 17, 1970, Defendant Washington and two other deputy sheriffs, armed with a writ of replevin with bond, appeared at 5343 Delancey Street and demanded entrance on threat of arrest.

39. Plaintiff Washington received no notice of the action taken against her prior to the arrival of the deputies at her home, at which time she was informed that they intended to seize and remove: a bed, 2 dressers, a clothes cabinet, a child's pool table, a 2 wheeled bicycle, a child's pin ball machine, a desk with a lamp and a variety of boys clothing. A copy of the writ served on Plaintiff Washington is attached hereto and marked as Exhibit "C".

40. All of the property named in the writ was in fact removed, leaving Plaintiff Washington, her son and her daughter deprived of many items necessary to their continued health and welfare.

41. Furthermore, Plaintiff Washington is financially unable to meet the cost of obtaining a counter bond, the only means of recovering their property.

42. The Acts of 1705, 1 Sm. L. 44, § 12, 12 P.S. § 1821, and April 19, 1901, P.L. 88, as amended, 12 P.S. §§ 1824-1845, and Pennsylvania Rules of Civil Procedure 1071 to 1087 are contrary to the United States Constitution in that:

(a) said Acts and Rules have the effect of permitting the Sheriff to invade the privacy of the home in order to conduct a search and seize property without a warrant and without probable cause in violation of rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution;

(b) said Acts and Rules have for their purpose the establishment of a procedure under which individuals are deprived of their property without due process of law guaranteed by the Fourteenth Amendment to the United States Constitution; and

(c) said Acts and Rules have the effect of denying low-income individuals access to the Courts to regain possession of their property, thus denying them the equal

protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that:

1. The Court convene a three-judge District Court as required by Title 28 U.S.C. §§ 2281 and 2284.
2. The Court declare the Acts of 1705, 1 Sm. L. 44, § 12, 12 P.S. § 1821, and April 19, 1901, P.L. 88, as amended, 12 P.S., 1824 to 1845, and Pennsylvania Rules of Civil Procedure 1071 to 1087 and any operations thereunder to be unconstitutional and invalid.
3. The Court preliminarily enjoin and, after full hearing, permanently enjoin defendants Sheriff Lennox and Prothonotary Cortese, their deputies, agents, and others acting in concert with them from proceeding pursuant to the above acts and rules.
4. The Court grant such other relief as shall be necessary and proper.

/s/ Joel G. Weisberg

/s/ David A. Scholl

/s/ Harold I. Goodman

/s/ Peter W. Brown

/s/ Harvey H. Schmidt

[*Duly sworn to by Mitchell R. Epps*  
*jurat omitted in printing (all in italics)*]

[*Duly sworn to by Paul Parham*  
*jurat omitted in printing (all in italics)*]

[*Duly sworn to by Ellen M. Parham*  
*jurat omitted in printing (all in italics)*]

[*Duly sworn to by Rosa Bell Washington*  
*jurat omitted in printing (all in italics)*]

## EXHIBIT A TO COMPLAINT

Replevin With Bond

THE COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

COURT OF COMMON PLEAS NO.

TRIAL DIVISION

AUG. TERM, 1970

No. 4082

GOVERNMENT EMPLOYEES EXCHANGE CORP.

vs.

MITCHELL R. EPPS and JACQUELINE EPPS

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA:

YOU ARE DIRECTED to replevy the following property<sup>(1)</sup>:

G.E. Stereo	Model #C443	\$450.00
5X15 Carpet		250.00
Wedding Ring—Male		100.00
Wedding Ring—Female		100.00
Diamond Watch		100.00
T.V. Antennae (roof)		100.00

You are directed to notify<sup>(2)</sup>: MITCHELL R. EPPS and JACQUELINE EPPS, 1828 Bainbridge Street, Philadelphia, Penna., Defendant(s), that<sup>(3)</sup> GOVERNMENT EMPLOYEES EXCHANGE CORP., Plaintiff(s), has (have) commenced an Action of Replevin With Bond, which said Defendant(s) is (are) required to defend.

If the property replevied is found in the possession of anyone not a Defendant, you are directed to notify him

that he has been added as a Defendant, and is required to defend the action.

AMERICO V. CORTESE  
Prothonotary

By /s/ R. Paglia  
Clerk

Date Aug. 27, 1970

A TRUE COPY

Attest:

/s/ P. Scarpello  
Deputy Sheriff

---

(1) Specifically describe property.

(2) Name(s) of Defendant(s).

(3) Name(s) of Plaintiff(s).

## EXHIBIT B TO COMPLAINT

Replevin With Bond

THE COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIAC. P.  
COUNTY COURT  
SEPTEMBER TERM, 1970

No. 737

SEARS, ROEBUCK AND CO.

vs.

PAUL PARHAM, 611 North 54th St., Phila., Pa.

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA:

YOU ARE DIRECTED to replevy the following property<sup>(1)</sup>:

One (1) Harmony House Table #4S and 4 stools

One (1) Harmony House Divan Bed, #48087

You are directed to notify<sup>(2)</sup>: PAUL PARHAM, Defendant(s), that<sup>(3)</sup> SEARS, ROEBUCK AND CO., Plaintiff(s), has (have) commenced an Action of Replevin With Bond, which said Defendant(s) is (are) required to defend.

If the property replevied is found in the possession of anyone not a Defendant, you are directed to notify him

that he has been added as a Defendant, and is required to defend the action.

AMERICO V. CORTESE  
Prothonotary

By /s/ J. Gargiulo  
Clerk

Date Sep. 11, 1970

A TRUE COPY

Attest:

/s/ C. Dewdy & G. Edwardy  
Deputy Sheriff

---

(1) Specifically describe property.

(2) Name(s) of Defendant(s).

(3) Name(s) of Plaintiff(s).

## EXHIBIT C TO COMPLAINT

Replevin With Bond

THE COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

COURT OF COMMON PLEAS No.

SEPT. TERM, 1970

No. 1154

LEWIS WASHINGTON

vs.

ROSA BELL ANDREWS, 5343 Delancey St., Phila., Penna.  
and

LILLIE PERKINS, 5343 Delancey St., Phila., Penna.

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA:

YOU ARE DIRECTED to replevy the following property<sup>(1)</sup>:

Folding Bed  
Mahogany Dresser  
White Dresser  
Metal Cabinet for Clothes  
Pool Table  
2 Wheel Bicycle  
Pin Ball Machine  
Desk with Lamp  
Boys Clothes

You are directed to notify<sup>(2)</sup>: ROSA BELL ANDREWS, 4343 Delancey St., Phila., Penna. and LILLIE PERKINS, 5343 Delancey St., Phila., Penna., Defendant(s), that<sup>(3)</sup> Lewis Washington of 4228 W. Girard

Avenue, Phila., Pa. 19104, Plaintiff(s), has commenced an Action of Replevin With Bond, which said Defendant(s) (are) required to defend.

If the property replevied is found in the possession of anyone not a Defendant, you are directed to notify him that he has been added as a Defendant, and is required to defend the action.

AMERICO V. CORTESE  
Prothonotary

By /s/ J. Gargiulo  
Clerk

Date Sept. 14, 1970

Attest:

/s/ J. Brennar [Illegible]

---

<sup>(1)</sup> Specifically describe property.

<sup>(2)</sup> Name(s) of Defendant(s).

<sup>(3)</sup> Name(s) of Plaintiff(s).

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

MOTION—Filed September 18, 1970

Pursuant to 28 U.S.C. § 2284 and Rule 65(b), Fed. R. Civ. P., and based upon the verified complaint within, plaintiffs move the Court for a temporary restraining order enjoining defendants Lennox and Cortese from further issuance and execution of writs of replevin with bond until a three judge district court can be convened and a hearing held.

1. Named plaintiffs have all had property seized by defendant Lennox on the authority of writs of replevin with bond issued by defendant Cortese which had previously been filed by the other named and the class defendants.

2. In each case the respective named plaintiffs received no notice of the action taken against them prior to the arrival of a deputy sheriff armed with a writ of replevin with bond at their homes.

3. In none of these cases have the respective named plaintiffs received complaints or other documents explaining the nature of the actions taken against them.

4. All class plaintiffs are subject to similar deprivations through seizure by defendant Lennox on writs of replevin issued by defendant Cortese at the request of the other named and the class defendants.

5. The statutes and rules which provide for the seizure and removal of the property of plaintiffs by writs of replevin and the actions of defendants pursuant to

them subject plaintiffs to unreasonable searches and seizures in violation of the Fourth Amendment of the United States Constitution. *See v. City of Seattle*, 387 U.S. 541 (1967); *Camara v. Municipal Court*, 387 U.S. 523 (1967); and *Laprease v. Raymours Furniture Company, Inc.*, C.A. No. 70-CU-16 (N.D. N.Y., July 30, 1970) (three judge court)

6. The statutes and rules which provide for the seizure and removal of the property of the plaintiffs by writs of replevin with bond and the actions of defendants pursuant to them deprive plaintiffs of their property without notice or hearing in violation of the Fourteenth Amendment to the United States Constitution. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950); *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915); *Laprease v. Raymours Furniture Co., Inc.*, *supra*.

7. The statutes and rules which provide for the seizure and removal of the property of plaintiffs by writs of replevin with bond and the actions of defendants pursuant to them, requiring plaintiffs to post counterbonds of double the value of the property replevied to recover that property, in effect deny low-income individuals access to the Courts and equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. *Harper v. Virginia Board of Electors*, 383 U.S. 663 (1966); *Griffin v. Illinois*, 351 U.S. 12 (1965); and *Edwards v. California*, 314 U.S. 360 (1941).

8. A complaint need not be filed at the time of the execution of the writ and the seizure of the property, and plaintiffs need not be provided, even at this point, with any notice of the nature of the claim against them.

9. Plaintiffs are required to file any counterclaims or petition for an order to impound within seventy-two (72) hours of the seizure, Pa. R. Civ. P. 1076, but they are given no notice of such a requirement.

10. Unless restrained defendants will continue to deprive plaintiffs of their constitutionally guaranteed rights.

11. Such continued deprivation will subject plaintiffs to immediate and irreparable harm in that plaintiffs will be subject to unreasonable searches and seizures and to the deprivation of the use of their property without due process of law.

12. This need for preserving the status quo in order to prevent immediate and irreparable harm to plaintiffs provides the necessary basis for the granting by this court of a temporary restraining order on behalf of all plaintiffs. *United States v. United Mine Workers*, 330 U.S. 258 (1947); *Houghton v. Meyer*, 208 U.S. 149 (1908).

Respectfully submitted,

/s/ Joel G. Weisberg

/s/ David A. Scholl

/s/ Harold I. Goodman

/s/ Peter W. Brown

/s/ Harvey N. Schmidt

Attorneys for Plaintiffs  
Community Legal Services, Inc.  
313 South Juniper Street  
Philadelphia, Pennsylvania 19107

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

MOTION—Filed September 18, 1970

Plaintiffs herewith move the Court based upon the verified complaint within:

1. To convene a three judge District Court pursuant to 28 U.S.C. §§ 2281 and 2284.
2. Upon hearing, preliminarily to enjoin defendant Lennox from executing upon writs of replevin with bond pursuant to the Acts of 1705, 1 Sm. L. 44, § 12, 12 P.S. § 1821, and April 19, 1901, P.L. 88, as amended, 12 P.S. §§ 1824 to 1845 and pursuant to Pennsylvania Rules of Civil Procedure 1071 to 1087, and from seizing and removing personal property on the authorization thereof.
3. Upon hearing, preliminarily to enjoin defendant Cortese from issuing writs of replevin with bond pursuant to the Acts of 1705, 1 Sm. L. 44, § 12, 12 P.S. § 1821, and April 19, 1901, P.S. 88 as amended, 12 P.S. §§ 1824 to 1845 and pursuant to Pennsylvania Rules of Civil Procedure 1071 to 1087.

Respectfully submitted,

/s/ Joel G. Weisberg

DAVID A. SCHOLL

/s/ Harold I. Goodman

/s/ Peter W. Brown

/s/ Harvey N. Schmidt

Attorneys for Plaintiffs  
Community Legal Services  
313 South Juniper Street  
Phila., Pa.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA  
BELL ANDREWS WASHINGTON, on behalf of themselves  
and all other similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Pro-  
thonotary of the Court of Common Pleas of Philadel-  
phia County, 288 City Hall, Philadelphia, Pennsyl-  
vania; and WILLIAM M. LENNOX, individually and as  
Sheriff of Philadelphia County, Third Floor, City Hall,  
Philadelphia, Pennsylvania; LEWIS WASHINGTON, 4228  
W. Girard Avenue, Philadelphia, Pennsylvania; GOV-  
ERNMENT EMPLOYEES EXCHANGE CORP., Kaign Ave-  
nue and Crescent Blvd., Pennsauken, New Jersey; and  
SEARS, ROEBUCK AND COMPANY, Adams and Whitaker  
Avenues, Philadelphia, Pennsylvania; on behalf of  
themselves and all others similarly situated, DEFEND-  
ANTS

ORDER—Filed September 29, 1970

WHEREAS, in this action it appears by verified com-  
plaint that a temporary restraining order preliminary  
to hearing upon notice for a preliminary injunction  
should issue because immediate and irreparable injury,  
loss and damage will result to plaintiffs before a three  
judge district court can be convened and hear plaintiffs'  
motion for a preliminary injunction;

Now, therefore, on motion of plaintiffs,

It is ORDERED that:

\* \* \* \*

(e) The property of plaintiff Rosa Bell Washington  
seized by defendant Lennox on a writ of replevin with  
bond ordered by defendant Lewis Washington, be re-  
turned to plaintiff Washington forthwith.

Issued at 7:45 o'clock p.m. this 18th day of 1970.

/s/ E. Mac Troutman  
J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

Civil Action No. 70-2592

MITCHELL EPPS, ET AL., PLAINTIFFS

vs.

AMERICO V. CORTESE, ESQ., ET AL., DEFENDANTS

---

Before HON. E. MAC TROUTMAN, J.

---

Reading, Pa., September 25, 1970

---

[fol. 2] THE COURT: This is the matter of Mitchell Epps, et al., vs. Cortese, et al., Civil Action No. 70-2592, as to which this Court entered a temporary restraining order on September 18th, 1970.

Let the record show that the Court has been in touch with counsel for the plaintiffs, Mr. Joel Weisberg, Esq., who has been advised that Mr. Lewis Washington of Philadelphia has appeared before the Court in connection with the temporary restraining order issued on September 18, 1970.

That order directed William M. Lennox, Sheriff of Philadelphia County, to return to the plaintiff, Rosa Belle Andrews Washington, certain property seized and in the possession of the sheriff by reason of a writ of replevin. Mr. Weisberg has advised that he has no objection to the Court proceeding to hear the testimony of Mr. Lewis Washington, defendant, and for that purpose Mr. Washington will be sworn as a witness at this time.

---

LEWIS WASHINGTON, having been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY THE COURT:

Q Now, what is your name, sir?  
[fol. 3] A Lewis Washington.

Q And you reside at 4228 West Girard Avenue, Philadelphia, Pennsylvania?

A I do, Your Honor.

Q And you are one of the defendants in Civil Action No. 70-2592?

A I am.

Q And you are here by reason of a temporary restraining order entered by this Court on September 18, 1970, at 7:45 p.m., is that correct?

A Yes, sir, Your Honor.

Q That order directed the Sheriff of Philadelphia County to return to the plaintiff, Rosa Belle Andrews Washington, certain property therein more specifically described, and it is by reason of the service of that order that you have appeared before the Court today, is that correct?

A Yes, sir, Your Honor.

Q Now, paragraph 34 of that complaint relating particularly to the plaintiff, Rosa Belle Andrews Washington, alleged that the said Rosa Belle Andrews Washington had filed for a divorce from her husband, Lewis Washington, and that she was on the day of the filing of the complaint, September 18, 1970, awaiting the approval of the Court. That allegation is contained in the [fol. 4] complaint, and it was so represented by counsel.

Mr. Washington, will you tell us whether that is correct?

A That is incorrect. I am the one that filed for the divorce, and the divorce was approved and signed by the Judge September 2, 1970.

Q And you have handed to me a certified copy of a decree in course captioned Lewis Washington vs. Rosa B. Washington, February Term 1970, No. 4151, is that correct?

A Yes, sir, Your Honor.

Q And that is duly certified by the Prothonotary and established that a decree of divorce was signed by Judge Dwyer on September 2, 1970, is that correct?

A Yes, sir, Your Honor, correct.

THE COURT: We will have the decree in question marked as an exhibit and made a part of the record.

(Decree of divorce dated September 2, 1970, February Term, 1970, No. 4151, was marked Exhibit D-1.)

BY THE COURT:

Q So that the allegation contained in the complaint and the representations of counsel to the effect that your wife had sued you for divorce and that the matter was then, on September 18th, pending, is an incorrect allegation?

A Yes, sir, it is untrue.

[fol. 5] Q Now, Mr. Washington, paragraph 35 of the complaint alleges that the plaintiff, your wife, was on September 18, the date of the signing of the Court's order, living with her two children, a girl four years of age, and a boy 11 years of age in her home at 5343 Delancey Street, Philadelphia. Is that a correct statement?

A That is not true. The boy, Lewis Washington, Jr., 11 years old, is living with me at 4228 West Girard Avenue. Was at that time and still is.

Q Living with you?

A Living with me.

Q And on September 18, the date of the filing of the complaint and the filing of the Court's order, the boy in question was living with you?

A Yes, sir, he was, Your Honor.

Q The property in question which was seized pursuant to a writ of replevin, consisting of a folding bed, a mahogany dresser, a pool table, a two-wheel bicycle, pinball machine, and desk with lamp, was property used by whom?

A Lewis Washington, Jr., my son.

Q And who is the owner of that property?

A I am the owner.

Q Did the sheriff seize any boys' clothes?

A No. My wife has the boys' clothes.

[fol. 6] Q Does the white dresser and the metal cabinet for clothes relate to your son, or is that—

A That is my daughter's.

Q That is used by the daughter?

A By the daughter.

Q Then except for those two items, the white dresser and the meal cabinet for clothes, all other items are used by your son?

A By my son, yes.

Q And those items were and are now owned by you?

A Yes, sir, Your Honor.

Q Was it by reason of this ownership that a writ issued?

A Yes, sir, that is why it was issued, yes, sir.

THE COURT: It now appears to the Court that the representations upon which the temporary restraining order of September 18, 1970, issued were incorrect, both as to allegations contained in the complaint and representations made by counsel. Accordingly, we will vacate the order of September 18, 1970.

This hearing is adjourned. Court is adjourned until 10:00 o'clock Monday morning.

---

Reported by:

SAMUEL M. BLUMBERG, JR.

\* \* \* \*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL.

vs.

AMERICO V. CORTESE, ESQ., ET AL.

ORDER—Filed September 29, 1970

And now, this 25th day of September, 1970, IT IS ORDERED that the order of this Court dated the 18th day of September 1970 be and the same is hereby VACATED.

/s/ E. Mac Troutman  
J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA BELL ANDREWS WASHINGTON, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Prothonotary of the Court of Common Pleas of Philadelphia County, 288 City Hall, Philadelphia, Pa.; and WILLIAM M. LENNOX, individually and as Sheriff of Philadelphia County, Third Floor, City Hall, Philadelphia, Pa.; LEWIS WASHINGTON, 4228 W. Girard Avenue, Philadelphia, Pa.; GOVERNMENT EXCHANGE CORP., Kaign Avenue and Crescent Blvd., Pennsauken, New Jersey; and SEARS, ROEBUCK AND COMPANY, Adams and Whitaker Avenues, Philadelphia, Pennsylvania; on behalf of themselves and all others similarly situated, DEFENDANTS

ORDER CONSTITUTING A THREE-JUDGE COURT—  
Filed October 5, 1970

Pursuant to the provisions of Section 2284, Title 28, United States Code, I designate Honorable J. Cullen Ganey, United States Circuit Judge, and Honorable John B. Hannum, United States District Judge, to sit with Honorable E. Mac Troutman, United States District Judge, as members of the Court for the hearing and determination of the above entitled case.

/s/ William H. Hastie  
Chief Judge  
Third Judicial Circuit

Dated: October 2, 1970

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

DEFENDANT, GOVERNMENT EMPLOYEES EXCHANGE CORPORATION'S ANSWER TO PLAINTIFFS' COMPLAINT—  
Filed October 9, 1970

**FIRST DEFENSE**

Defendant admits the allegations contained in paragraphs 8, 9, 11-14, 16; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 20-23, 25-41 of the Complaint; and denies each and every other allegation contained in the Complaint. Paragraph 4(d) is specifically denied as plaintiffs have failed to properly designate the class plaintiffs in accordance with the Federal rules and similarly 6(f) is denied as to class defendants.

**SECOND DEFENSE**

The Complaint fails to state a cause of action against defendant upon which relief can be granted.

**THIRD DEFENSE**

The count lacks jurisdiction as the action deals solely with property rights.

**FOURTH DEFENSE**

Plaintiffs have failed to properly designate the class action in accordance with the Federal rules of Civil Procedure as to plaintiffs and defendants.

## FIFTH DEFENSE

Plaintiff, MITCHELL R. EPPS, has failed to join his wife, JACQUELINE EPPS, an indispensable party.

## SIXTH DEFENSE

Plaintiff, EPPS, agreed in writing that defendant would retain ownership of the subject matter of the replevin action and therefore he has waived his rights to allege personal ownership.

## SEVENTH DEFENSE

The validity of the Pennsylvania Replevin Statute and applicable Civil Procedural Rules should first be tested in the State Court.

## COUNTERCLAIM

Defendant, GOVERNMENT EMPLOYEES EX-CHANGE CORPORATION, claims of the Plaintiff, MITCHELL R. EPPS, upon the following:

1. The Court having jurisdiction in this matter, no further allegations are required.
2. Defendant, GOVERNMENT EMPLOYEES EX-CHANGE CORPORATION, is a New Jersey corporation engaged in the sale of consumer goods.
3. Plaintiff, MITCHELL R. EPPS, is an individual.
4. On the dates mentioned, of the kind and price, and in the amounts set forth in Exhibit "A" hereto attached and made a part hereof, which is a true and correct copy of the books of original entry of the defendant, the plaintiff purchased the merchandise set forth or referred to therein and agreed to pay therefor.
5. The said merchandise set forth in Exhibit "A" was ordered at the specific instance and request of the plaintiff, to whom the same was delivered and received without complaint.
6. The prices charged are the fair, reasonable, just and market prices of the merchandise set forth and are the prices which the plaintiff agreed to pay therefor.

7. Pursuant to a Writ of Replevin issued by the defendant, its men and two deputy Sheriffs, peaceably and without force were voluntarily admitted to plaintiff EPPS' home, whereupon plaintiff voluntarily pointed out the whereabouts of the stereo, but indicated that he was not in possession of the remaining articles to be replevied.

8. Plaintiff is entitled to a credit of \$450.00 representing the value of the replevied stereo set. All other credits, if any, to which the plaintiff is entitled, is set forth in the said Exhibit "A".

9. Plaintiff was in default in the payment of his monthly installments of \$33.25 on the revolving charge account to the extent of \$311.25 as of August 9, 1970, and as a result, defendant declared the entire sum due in accordance with the terms of defendant's Exhibit "A".

10. The defendant has made demand upon the plaintiff for payment for the said merchandise in the amount of \$2,017.26, but the plaintiff has failed and refused and still refuses to pay the said sum or any part thereof.

11. Plaintiff, in accordance with Exhibit "A", attached hereto and made a part hereof, has agreed to charges of 20% as an attorney's collection fee, totaling \$403.44.

WHEREFORE, defendant, GOVERNMENT EMPLOYEES EXCHANGE CORPORATION, respectfully prays for judgment against the plaintiff, MITCHELL R. EPPS, in the sum of \$2,420.70.

SHESTACK, HERMAN & BAYER

By: /s/ Ronald Jay Bayer  
Attorneys for Defendant  
Government Employees Exchange  
Corporation



## RENTAL INSTRUMENT CONTRACT - SECURITY AGREEMENT

Printed Name Matchell Initial G  
 Street or P.R.R. 123 Main Street  
 City Matchell State Pa.

To: G. E. X. Inc., OF

I (Buyer) hereby purchase the following merchandise from you upon the terms set forth below:

Item No.	DESCRIPTION	Model Number	Serial Number	Amount
1	16-50 - 11-30-68	12-443	1222	76
2	2-2012-2a-c8			
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71				
72				
73				
74				
75				
76				
77				
78				
79				
80				
81				
82				
83				
84				
85				
86				
87				
88				
89				
90				
91				
92				
93				
94				
95				
96				
97				
98				
99				
100				
101				
102				
103				
104				
105				
106				
107				
108				
109				
110				
111				
112				
113				
114				
115				
116				
117				
118				
119				
120				
121				
122				
123				
124				
125				
126				
127				
128				
129				
130				
131				
132				
133				
134				
135				
136				
137				
138				
139				
140				
141				
142				
143				
144				
145				
146				
147				
148				
149				
150				
151				
152				
153				
154				
155				
156				
157				
158				
159				
160				
161				
162				
163				
164				
165				
166				
167				
168				
169				
170				
171				
172				
173				
174				
175				
176				
177				
178				
179				
180				
181				
182				
183				
184				
185				
186				
187				
188				
189				
190				
191				
192				
193				
194				
195				
196				
197				
198				
199				
200				
201				
202				
203				
204				
205				
206				
207				
208				
209				
210				
211				
212				
213				
214				
215				
216				
217				
218				
219				
220				
221				
222				
223				
224				
225				
226				
227				
228				
229				
230				
231				
232				
233				
234				
235				
236				
237				
238				
239				
240				
241				
242				
243				
244				
245				
246				
247				
248				
249				
250				
251				
252				
253				
254				
255				
256				
257				
258				
259				
260				
261				
262				
263				
264				
265				
266				
267				
268				
269				
270				
271				
272				
273				
274				
275				
276				
277				
278				
279				
280				
281				
282				
283				
284				
285				
286				
287				
288				
289				
290				
291				
292				
293				
294				
295				
296				
297				
298				
299				
300				
301				
302				
303				
304				
305				
306				
307				
308				
309				
310				
311				
312				
313				
314				
315				
316				
317				
318				
319				
320				
321				
322				
323				
324				
325				
326				
327				
328				
329				
330				
331				
332				
333				
334				
335				
336				
337				
338				
339				
340				
341				
342				
343				
344				
345				
346				
347				
348				
349				
350				
351				
352				
353				
354				
355				
356				
357				
358				
359				
360				
361				
362				
363				
364				
365				
366				
367				
368				
369				
370				
371				
372				
373				
374				
375				
376				
377				
378				
379				
380				
381				
382				
383				
384				
385				
386				
387				
388				
389				
390				
391				
392				
393				
394				
395				
396				
397				
398				
399				
400				
401				
402				
403				
404				
405				
406				
407				
408				
409				
410				
411				
412				
413				
414				
415				
416				
417				
418				
419				
420				
421				
422				
423				
424				
425				

卷之三

卷之三

... and I have a lot of selling merchandise for you when I come to town.

DISCUSSION

卷之三

Why do I  make application for credit life insurance to cover my wife's term life insurance of this amount being a 12 year end at the age of 65 by 1980 if life insurance covers the 12 year period.

NOTICE TO APPLICANTS

constitute this contract before the parties sign it, and to provide him with a copy of the contract before he signs it.

SCHOOL OF ECONOMICS

272

1

111

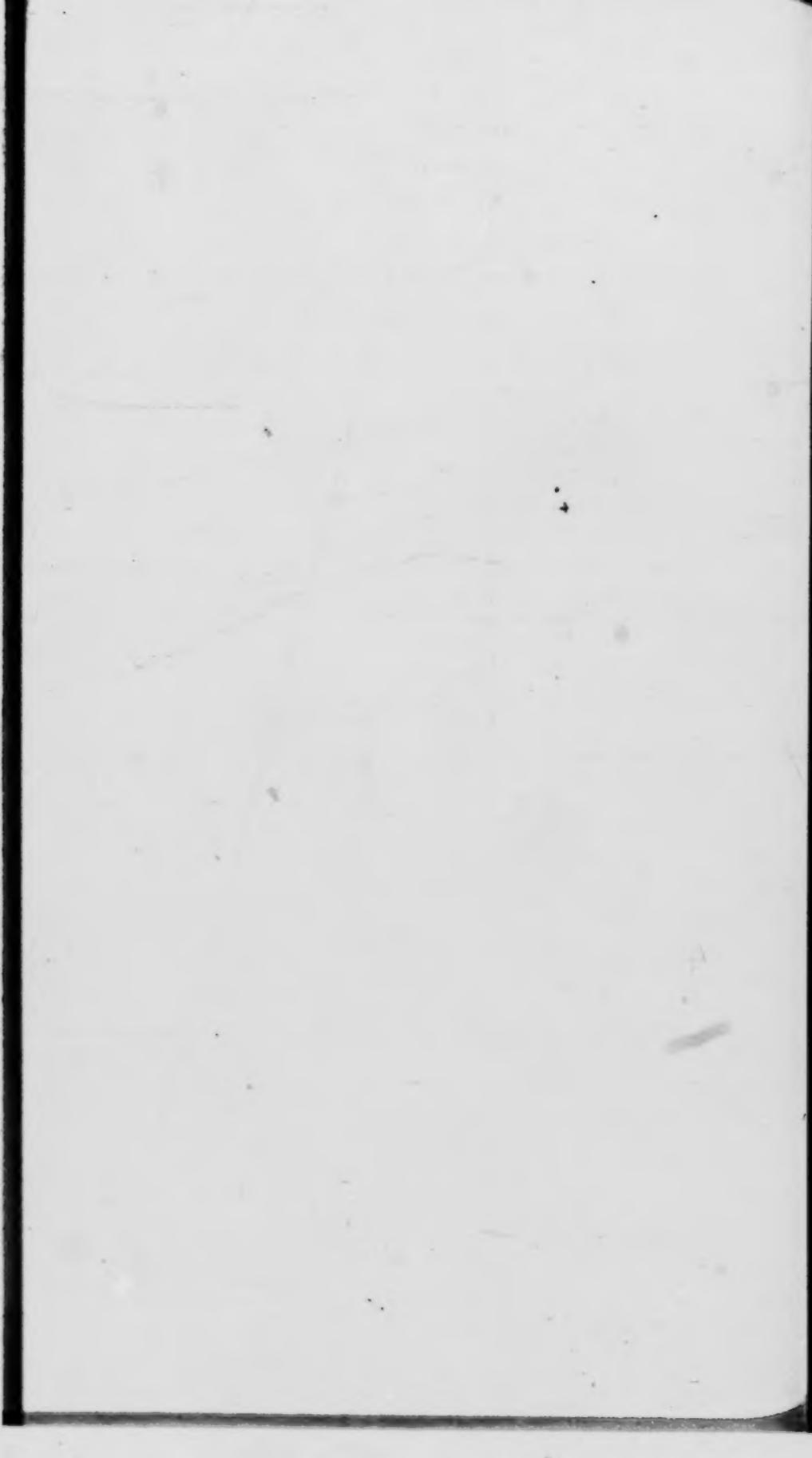
卷之三

卷之三









IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA  
BELL ANDREWS WASHINGTON, on behalf of themselves  
and all other similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Pro-  
thonotary of the Court of Common Pleas of Phila-  
delphia County; WILLIAM M. LENNOX, individually  
and as Sheriff of Philadelphia County; LEWIS WASH-  
INGTON; GOVERNMENT EMPLOYEES EXCHANGE CORP.;  
SEARS, ROEBUCK AND CO., DEFENDANTS

ANSWER TO COMPLAINT FILED BY SEARS, ROEBUCK  
AND CO.—Filed October 13, 1970

1. Denied. The Statutes of Pennsylvania provide for the replevin of personal property solely from defendants who are *not* in lawful possession thereof but are in fact holding the same unlawfully and in violation of the rights of the replevying party. The plaintiffs, Paul Parham and Ellen Parham, who are the only plaintiffs with whom the defendant, Sears, Roebuck and Co., is concerned, had neither ownership nor any lawful right to possession in the replevied goods at the time the replevin occurred. The plaintiff, Ellen Parham, had and at no time known to defendant, claimed any right or even any color of right in the replevied goods until the complaint in this action was filed. The plaintiff, Paul Parham, had agreed in writing that the defendant, Sears, Roebuck and Co., owned the goods. In addition, he had agreed in writing that the defendant had the right to immediate possession thereof in the event that he defaulted on certain obligations which he assumed in consideration of being granted a conditional right to pos-

session thereof (see Exhibit A which is attached hereto and made a part hereof). The plaintiff, Paul Parham, knew that he had failed to comply with the said obligations, had been given a number of notices of his default, and had likewise been notified orally and in writing on numerous occasions that the defendant claimed lawful possession of the said goods and requested their return. The plaintiff likewise received a mailgram (letter) which was sent him on August 19, 1970, that the defendant was instituting an action to repossess the goods to which it had both title and the right to immediate possession (see Exhibit B attached and made a part hereof). The said agreement shown in Exhibit A complied fully with the Uniform Commercial Code as enacted in forty-nine States on the basis of serious studies and consultations by legal scholars, practicing lawyers, and other experts on commercial and credit matters, and with the credit regulations of the State of Pennsylvania. As to the class of unnamed plaintiffs contended for, the class insofar as the defendant, Sears, Roebuck and Co. is concerned, must, therefore, consist of plaintiffs who do not own and have no right to possession of the goods replevied. Further, the class can only extend to individual natural persons, not in business, and only personal property used for personal use, commonly known as "consumer goods", as defined in the Uniform Commercial Code.

2. Denied. The plaintiffs, Parham, who are the only plaintiffs with whom Sears, Roebuck and Co., is concerned had no rights, privileges or immunities relating to the goods replevied at the time the replevin was made. The defendant had in fact been denied its property rights, privileges and immunities in violation of both state, federal and constitutional law by the plaintiffs, Parham.

3. Denied as stated. Plaintiffs, Parham, have no adequate remedy at law solely because they have no substantive rights. If they did have any substantive rights, which contention is not only denied but is not sustainable because of the admissions in the complaint, they have adequate remedies under the statutes of the Commonwealth of Pennsylvania.

4. (a), (b) and (c) It is admitted that the named parties are plaintiffs in this action, but only two of them, those named in Paragraph 4(b) are plaintiffs against the defendant, Sears, Roebuck and Co., and one of those, namely Ellen Parham, has no right or even color of right to the replevied property, nor any connection with Sears, Roebuck and Co. whatsoever.

(d) As pleaded in Paragraph 1 of the Answer, the class of plaintiffs insofar as Sears, Roebuck and Co. is concerned must be limited to those persons who have no ownership and no right to possession in the goods replevied, and cannot include the broad class for which the plaintiffs contend, and must be subject to the other restrictions mentioned in the said paragraph of the answer.

5. Denied. The named plaintiffs, so far as Sears, Roebuck and Co. is concerned, can only represent persons against whom a replevin is instituted, who have no right of ownership or possession in the goods replevied and as further restated in Paragraph 1 of the Answer.

6. (a), (b), (c), (d) and (e) Sears, Roebuck and Co. admits the allegations of Paragraph 6(e) and is not required to answer the allegations of the other subparagraphs.

(f) The Defendant, Sears, Roebuck and Co., denies this allegation. It is not qualified in any way to represent fairly and adequately all persons who have instituted actions of replevin. Replevin is but a procedure to protect the rights of numerous persons having very different substantive rights. It has, for instance, been used since 1705 (the date of the original enactment) to prevent irreparable harm to the owners of personal property where there is a danger of the said personal property disappearing or being severely damaged, to recover stolen goods, to prevent the removal of extremely mobile personal property by persons having no right thereto. It is used and has been used by corporations, banks, finance companies, automobile dealers, etc., and the United States Government, itself, to protect themselves against the depredations of persons having no right whatsoever to the goods replevied. The right existed at the time of the Constitutional Convention and was being exercised

even as that Convention sat in Independence Hall in this very Commonwealth. To say that Sears, Roebuck and Co. can adequately defend an ancient right which has been exercised for more than two hundred and sixty-five years by persons having many varying rights under the substantive law, rights which may be destroyed forever, as a practical matter, if the action of replevin is declared illegal, is to impose an obligation upon Sears, Roebuck and Co. which cannot be sustained by any individual defendant. By the Fifth Amendment, the federal government is forbidden to deprive any person of life, liberty or property, without due process of law. This obviously applies to the federal courts as well as to the executive and legislature. The Court in this case must, therefore, seriously and conscientiously consider whether by a sweeping decision that the ancient right of replevin (often used in cases where no other remedy is practicable) is illegal, they are not depriving as a practical matter persons whom they have never considered of the only practical means they have to protect their constitutional rights. The matters in which replevin may be used as a merely procedural remedy involve a wide spectrum of substantive rights. All of these must be considered before giving a broad, sweeping decision, but in fact, any decision, to be reasonable and just, must be narrowed to those cases which the court has actually considered. Unless the court action is clearly narrowed to certain specific cases so far as substantive rights are concerned, Sears, Roebuck and Co., nor any other defendant, cannot adequately defend the interests of all parties who may institute replevin.

7. Denied. Neither the statutes nor the rules provide for seizure of property which is held in peaceful possession. They provide only for seizure where the possession of the party against whom replevin is instituted is in violation of the law and of the rights of the replevying party. Again in the specific case in which Sears, Roebuck and Co. is involved, there was agreement by the only plaintiff who has any right whatsoever to bring this action against Sears, Roebuck and Co., namely Paul Parham, that ownership and possession existed in Sears,

Roebuck and Co. at the time of the replevin and, therefore, that his possession of the goods at the time of replevin was in violation of his agreement, the laws of Pennsylvania and the rights of the defendant, Sears, Roebuck and Co., to be protected by such laws from the deprivation of its right to its property in accordance with the Fourteenth Amendment. If the State laws had not provided for the right of replevin in such a case, they would in effect be in violation of the Fourteenth Amendment, because they would not give a remedy under State law to the defendant to prevent as a practical matter the deprivation by the State of its right to its own property without due process of law. A right given by law that as a practical matter is non-existent, such as the recovery of a worthless judgment, is as much a violation of due process as is any action complained of by the plaintiffs who had no rights whatsoever in the instant case. This argument may, of course, apply with equal and indeed greater force to other replevying parties where a greater danger of loss of the property and any other meaningful remedy may exist. Again in the instant case involving the defendant, Sears, Roebuck and Co., there was notice and many notices as noted in Paragraph 1 hereof.

8 to 15. The Statutes of the Commonwealth of Pennsylvania and the Rules of Civil Procedure promulgated thereunder speak for themselves, and, therefore, no answer is required. It is noted, however, that no action of replevin with bond can be instituted without the approval of a bond by the county court having jurisdiction and the issuance of the writ by the court. It is further noted that the allegations of Paragraph 11 are not true in that the person served in a replevin action may without the filing of any bond demand that the plaintiff file a complaint, answer the same demanding possession of the goods and all damages arising from a wrongful replevin, and have the court order the repossession of the goods on his behalf together with all damages. (Assumpsit Rules applicable to Replevin and Rule 1085.) This right exists until the Plaintiff files a complaint and serves the same upon the Defendant and takes a default

judgment 20 days after such service or until, in the instant case, defendant complies with the applicable provisions of the UCC. The bond filed by the plaintiff is, of course, for the protection of the defendant's rights and if the bond is inadequate, the defendant can again petition the court and without filing a counterbond ask for an adjustment of the bond filed by the plaintiff. In addition to the amount of the bond which would be forfeit in the case of an improper replevin, the plaintiff is also personally liable for the damages sustained, the return of or, if that is impossible, the value of the goods as determined by the court. (Rule 1084-5). It is likewise noted that Paragraph 11 incorrectly states the case of Parham vs. Sears, Roebuck and Co. in that the plaintiff, Parham, at the time of the replevin, had neither the right of ownership of the articles replevied nor any right to possession thereof. He had notice that an action to repossess was being instituted and knew that the action concerned goods concerning which he had agreed that ownership was in the defendant and knew that the right to possession had vested in the defendant because of his defaults on obligations he had assumed. Such property could obviously not be immune or exempted from the right of replevin, and, therefore, the allegations of Paragraph 14 cannot apply to the Parham case. In addition to all his rights under the replevin statute and rules, plaintiff also had his rights under the Uniform Commercial Code since the replevin was based on the provisions of that statute and was merely a seizure of goods in accordance with the terms of that statute, the replevin being used solely because the defendant had refused to honor voluntarily the rights of possession and title of the defendant.

15. The allegations of Paragraph 15 do not apply to the plaintiff, Parham, because of the fact that he knew that he had no right to possession or title, had been warned of the imminent institution of the action, had known of the previous requests as to yielding possession. The Writ attached to the Complaint speaks for itself and clearly indicates that an action of replevin had been

instituted against him and that he was required to defend the same.

16. to 25. No action is required since all of these paragraphs refer to other defendants.

26. Paragraph 26 is denied as stated. The plaintiff, Paul Parham, named in Paragraph 26 and defendant did enter into a certain transaction whereby possession of the said goods was delivered to the plaintiff subject to a security interest and agreement under the Uniform Commercial Code of Pennsylvania whereby, *inter alia*, title to the goods remained in the defendant, and the option to repossess the merchandise upon plaintiff's default in any of the terms of the agreement was given to the defendant by the plaintiff. A true copy of said agreement is attached hereto and made a part hereof as Exhibit A. The plaintiff, Ellen Parham, was not subject to the said transaction.

27. It is admitted that plaintiff Parham did make payments up to and including December 1969. Thereafter, however, he failed to make various payments on the obligation as they fell due each month and continued throughout the period from January to the date of the replevin in default under the obligation. He did, during the said period, make payments of \$83.00 (Eighty-Three Dollars) so that at the time of the replevin there was due and owing the sum of \$154.47 (One Hundred Fifty-Four Dollars Forty-Seven Cents).

28. It is admitted as stated in Paragraph 27 of this Answer that certain payments were made by plaintiff.

29. Denied as stated. The plaintiff was warned personally, by telephone and by mailgram (letter) that repossession action was under way or authorized and that he should contact the defendant if he wished to discuss the matter further. On the 13th of March, 1970 Sears was informed by the plaintiff's wife that it should come out and repossess the merchandise and Sears sent a representative to do so. When such representative arrived, he was denied access to the merchandise. There was another later attempt under a voluntary agreement but this did not succeed either.

30., 31. The allegations in these two paragraphs are admitted except that defendant has no knowledge as to the alleged statements of the sheriffs that they had a right to seize the goods "forcibly" and demands proof thereof, if material. The taking of the goods from the premises involved no breach of the peace and no breaking or entering.

32. Denied for the reasons pleaded in the preceding paragraphs and further denied due to the fact that by security agreement executed in accordance with the authority of both the Goods and Services Installment Sales Act and the Uniform Commercial Code of Pennsylvania, the title to the property was vested in the defendant to whom plaintiff had given a right of repossession in the case of default. The plaintiffs have admitted in paragraphs 27 and 28 of the Complaint that such default did exist and does exist on their part so that at the time of the pleading the right to repossess the property still titled in its name was in defendant. Prior to the issuance of the writ of replevin defendant had made several attempts to exercise its contractual and statutory right to possess peacefully as allowed by the Uniform Commercial Code, but plaintiff had refused to allow defendant to exercise such rights. Only after such rights were denied to defendant did defendant institute the writ of replevin in accordance with its contractual and statutory rights under the Uniform Commercial Code and the security agreement.

33. Defendant is without knowledge or information as to the said allegation and, therefore, demands proof of the same, if material. It is noted, however, that under Pennsylvania law no counterbond is required of plaintiff, Parham, to reclaim the property, but instead plaintiff may defend the replevin action without a counterbond and, if successful, obtain judgment of possession over the property or the value thereof and damages for the taking and retention. (Pa. Rule C.P. 1084, 1085 Rules of Assumpsit applying to Replevin). Further, he can force the replevying party to put up greater security and gain without filing a counterbond himself. These rights exist until the plaintiff in the replevin action files

a complaint, serves the defendant and files a default judgment 20 days after such service or proceeds in accordance with the provisions of the Uniform Commercial Code.

34. to 41. The allegations of these paragraphs concern a plaintiff having no connection with Sears, Roebuck and Co. and, therefore, are neither admitted nor denied.

42. The prayer of Paragraph 42 is entirely too broad in that it attempts to have declared unconstitutional not only the Pennsylvania action of replevin with bond but also the Pennsylvania action of replevin without bond. The latter action provides for the service of a complaint upon the defendants prior to any actual seizure of the goods and does not provide for seizure of the goods until there has either been a hearing on the merits and judgment against the defendant or the defendant has failed to answer the complaint and default judgment has been entered against him. The attempt to declare the entire statute unconstitutional without a careful examination of each and every provision thereof would not only be beyond the jurisdiction of the court but entirely unjust in a situation where so many varying rights of creditors and debtors are concerned. This is especially true in view of the fact that the action of replevin has existed throughout the entire constitutional history of the United States and that the rights and equities between innumerable creditors and debtors may be affected by any decision in this matter.

(a) The plaintiff's statements in Paragraph 42 (a) are not correct in that the Sheriff was acting under a Writ issued by a County Court, Commonwealth of Pennsylvania and in accordance with the Statutes and Rules of Civil Procedure thereof. Further, the defendant and the Sheriff were acting in accordance with the rights granted to the defendant under the Uniform Commercial Code of Pennsylvania. The property being replevied was owned by the defendant and the defendant had the immediate right to possession thereof, which right to possession had been and was being denied by the plaintiff in spite of the fact that he had agreed that the defendant had such rights to title and possession.



# Microcard Editions

An Indian Head Company

A Division of Information Handling Services



MICROCARD®  
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES  
901. TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

CARD 7

Further, the defendant had on a number of occasions requested that the plaintiff honor his obligations in relation to the debt owed and in relation to the property rights of the defendant. The use of replevin in this case was merely a procedural remedy necessary to enforce the defendant's property rights under the laws of Pennsylvania and under the laws of the United States and the Constitution thereof.

(b) Paragraph 42(b) is denied because in the Parham case the plaintiff, Parham, had neither ownership of the goods replevied nor did he have any rights to the goods. Instead, he had violated the rights of the defendant as to the said property. The Replevin Laws and Rules of the Commonwealth of Pennsylvania do not provide for the taking of property from individuals who are entitled thereto, but instead provide solely for the said action in cases where the defendant in the replevin action has no right to title or possession of the goods replevied. They further provide for damages and the return of goods to any person who may be improperly denied thereof and such remedies are available without the necessity of filing any counterbond.

(c) Paragraph 42(c) is denied because as stated previously in this Answer there is no necessity for the party against whom a replevin is had to file a counter-bond in order to reclaim the goods and obtain damages for their taking and retention. Such right to recover the goods, etc., exists until the replevying party files a Complaint, serves the same upon the party from whom the goods have been taken and enters a default judgment if no Answer is filed within 20 days of such service.

WHEREFORE, defendant respectfully prays that:

(1) Any relief granted plaintiffs be limited to the action of replevin with bond, and not affect the action of replevin without bond, where no taking can occur without notice and opportunity to be heard.

(2) The prayers of the complaint be denied.

(3) Since plaintiff had admitted in his Complaint that he is in default under the security agreement exe-

cuted by him and was so at the time of the replevin, and since he had no right to possession of the replevined goods and no title therein and was in fact violating defendant's rights to possession, the Court should enter judgment on the pleadings or summary judgment against the plaintiff, Parham, and in favor of the defendant, Sears, Roebuck and Co.

(4) The Court deny the petition of the plaintiff to make this a class action or strictly limit the class to parties in precisely the same situation as the plaintiff, Parham, since the allowance of a broad and not clearly defined class of plaintiffs might cause serious injustice to numerous parties not of record who have used and may use the procedural right of replevin to protect essential rights they possess under the substance of law of the Commonwealth and the United States.

(5) The Court deny the prayer of the Complaint that Sears, Roebuck and Co. is qualified to represent as a class all of the numerous persons and entities in the Commonwealth who may at varying times have used the right of replevin. As stated in Paragraph 6(f), the right of replevin is purely procedural and may be necessary in numerous different situations to protect the rights given under numerous different statutes and the common law. It is impossible for Sears, Roebuck and Co. to defend this action except against the plaintiff, Parham, and persons who are in precisely his situation against whom the right of replevin may be used. The class of plaintiffs and defendants, if viable at all, must, therefore, be strictly eliminated to avoid possible and indeed probable injustice to many persons not of record.

/s/ Robert F. Maxwell  
ROBERT F. MAXWELL

/s/ Harry L. Devoe  
HARRY L. DEVOE  
Attorneys for Sears,  
Roebuck and Co.







## EXHIBIT A

**EASY PAYMENT ORDER** This order is subject to the approval of the Credit Sales Dept. of Sears, Roebuck and Co. There are to be no agreements regarding it, other than those mentioned below or attached hereto in writing.

**SECURITY AGREEMENT**

**SEARS, ROEBUCK AND CO.:** I will pay \$ 16.20 each month for 24 months and a final payment of \$ 3. All payments will be due on the same day of each month. The reverse side of this sheet constitutes a part of this contract. Until such payment has been made, I agree that: (1) Title to merchandise remains in you; (2) I have risk of loss or damage; (3) I will not sell, transfer possession of, renew, or encumber merchandise; (4) Upon one or more defaults in any terms of this agreement you may declare the entire balance due and payable or you may, at your option, repossess the merchandise. A delinquency charge of five percent (but not more than \$1.00) or less than one dollar (\$1.00) may be assessed on each installment in default for ten days or more. Buyer shall pay actual and reasonable costs of collection occasioned by removal of the goods from Pennsylvania without written permission of Sears, by failure of Buyer to notify Sears of any change of residence, or by failure of Buyer to communicate with Sears for forty-five days after default in any installment. If subsequent purchases are added to this contract, the total price under this contract shall be increased by the price of such purchases; all charges and payments may be increased proportionately; and all terms and conditions of this contract shall apply to all subsequent purchases. The goods purchased under this contract shall be security under any subsequent contract until the time sale price under this contract is fully paid.

**THE SERVICE CHARGE HEREIN CONTAINED DOES NOT EXCEED THE EQUIVALENT OF FIFTEEN PERCENT SIMPLE INTEREST PER ANNUM ON THE UNPAID BALANCE, EXCEPT THAT A MINIMUM SERVICE CHARGE OF SEVENTY CENTS (.70) PER MONTH MAY BE MADE.**

**NOTICE TO THE BUYER: (1) DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT, OR IF IT CONTAINS ANY BLANK SPACE. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT. (3) UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE SERVICE CHARGE.**

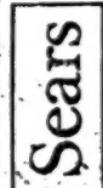
**RECEIPT OF SECURITY AGREEMENT AND A COPY OF THIS IS ACKNOWLEDGED.**

Barry J. Gaskins, Sears, Roebuck and Co. By H.C.U. Date Signed 2/1/69

Signature

**NOTE: A memorandum of the amount, number of installments or any other above item that may be incomplete will be furnished within fifteen days.**

P-2250 P. Rev. 5/67



**"Shop at Sears and Save"**

## EXHIBIT A

## SEARS MAILGRAM

ATTEMPTS TO RESOLVE PAST DUE CONDITION OF YOUR  
ACCOUNT HAVE FAILED. LITIGATION PENDING TO  
RECLAIM OUR MERCHANDISE.

CONTACT COLLECTION MANAGER IMMEDIATELY.

<u>MR. PAUL PARHAM</u>	4 31219 68850 1
<u>611 N. 54TH ST.</u>	Past Due \$77.50
<u>PHILA., PA. 19131</u>	Balance \$199.47

SEARS, ROEBUCK AND CO.

PF24553 EEC

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

ANSWER TO MOTIONS FOR PRELIMINARY INJUNCTION—  
Filed October 13, 1970

1. The named plaintiffs have had certain goods replevied by the sheriff. As to class defendants the class, if any, is improperly defined in the complaint in such a manner that it may do serious injustice to many parties not connected with this action. Insofar as the defendant Sears, Roebuck and Co. is concerned it cannot represent class defendants for all of the reasons stated in the Answer to the Complaint nor can the named plaintiff Paul Parham properly represent all of the class plaintiff contends for. The class action must therefore either be completely disallowed or very strictly limited.

2. Denied as to the plaintiff Parham who is the only plaintiff with whom Sears, Roesbuck and Co. is concerned on the basis of the facts and reasons stated in the Answer to the Complaint.

3. Denied because plaintiff Parham knew and had agreed that title to and possession of the replevied goods was in the defendant, Sears, Roebuck and Co. Further denied because the plaintiff Parham did receive a number of notices of the act of replevin to be instituted against him. The plaintiff Parham had also denied to the defendant its right of title and possession in the goods in violation of its right under the laws of the Commonwealth of Pennsylvania and the United States. This was the only reason he was given notice of the action to be taken in regards to the replevin and the only reason the replevin was made.

4. The class the plaintiff contends for is entirely improper as pleaded in Para. 1, 6 (f), 7 and Para. 42 of the Answer to the Complaint.

5. The property taken by the sheriff in the Parham action did not belong to the plaintiff Parham nor did he have any right of possession thereof. The replevin was instituted solely because he persisted in violating the rights of title and possession of the defendant in spite of numerous requests that he cease to do so. The plaintiff Parham had agreed that the right of title in the property was in defendant and that the right of possession was likewise in defendant if he violated certain obligations which he undertook in the said written agreement. He did violate such obligations. He was again notified of such violations and nonetheless persisted in them. The taking of the property was therefore entirely reasonable and was the only means of protection that defendant had in such property in view of the refusal of Parham to honor such rights.

6. The property replevied in the Parham case did not belong to plaintiff Parham nor did he have any right of possession therein. The statutes and rules do not provide for the seizure of property which a defendant in a replevin act owns nor in which he has the right of possession. Replevy is solely to recover property from defendants who have no rights therein. Since the decision of the U. S. Supreme Court in the *Sniadach* case, two Federal Courts have considered similar replevin statutes and in both cases held them entirely proper and constitutionally valid. These cases are *Brunswick Corp. vs J. P. Inc.*, 424 Fed. 2nd 100, 105 (1970) (C.A. 10) and *Fuentes vs Faircloth*, a decision by a three judge federal court in the southern district of Florida. The latter case was decided on September 9, 1970. Both cases considered the *Sniadach* case and held it inapplicable to replevin. It is to be noted further that Justice Douglas in giving the Court's opinion in the *Sniadach* case laid great emphasis on the fact that the wages which had been garnisheed were a very peculiar sort of property and his decision was based in a large part, if not entirely, on this fact. Further Justice Douglas stated on Page 23 L. Ed. 2nd 352, 395, U. S. 339, that summary process may well meet the requirements of due process in certain situations. He then cited a number of cases where this was so, such cases referring to the seizure

of goods or property without prior notice or hearing. He further stated that an exception to the Sniadach decision would exist where a creditor is entitled to special protection. It is submitted that the exception mentioned by Justice Douglas in his opinion in Sniadach would include the situation here present where the replevied property was goods which the replevying party owned and in which it had an immediate right to possession by agreement with the party against whom the replevin was made. It is not the rights of the plaintiff Parham which were being violated at the time of the replevin but instead the rights of the defendant Sears, Roebuck and Co. Further, the decisions in Brunswick and Fuentes hold that Sniadach is distinguishable from cases involving replevin (such as here) where a security interest has been agreed to by the person against whom the replevin is made, giving the secured party the right to title and immediate possession of the property.

7. The statutes and rules do not require a filing of counter bond, but instead the party against whom a replevin is had may regain possession and obtain damages for wrongful taking without the filing of any such bond. The procedure is explained at length in the Answer to the Complaint. The party against whom replevin is had has a substantial period of time to obtain such possession and obtain damages as is further explained in the Answer to the Complaint. Therefore the contention that low income individuals are denied access to the courts is simply not so under the laws of the Commonwealth of Pennsylvania regarding replevin. It is obvious by the filing of this action that the plaintiffs did have qualified legal representation available to avail themselves of the protective provisions of the Pennsylvania laws.

8. The plaintiff Parham did have notice and knowledge of the rights of the defendant in the goods and had agreed thereto. He also had notice that the action was being instituted. This is set forth at length in the Answer.

9. The remedy of impounding the property is only one of many remedies given by the rules and is not nec-

essary for the purpose of reclaiming the goods, obtaining the value thereof, or obtaining damages for the taking. The various remedies available to the party against whom replevin is made are set forth in detail in the Answer as is the substantial time during which they may make such claims.

10. The plaintiffs were denied no constitutional rights. Further they have most adequate remedies in the replevin action which is at this moment still pending and such remedies exist whether they filed counter bond or not.

11. The contention of the paragraph can obviously apply only to the alleged class plaintiffs. As averred both in the Answer to the Complaint and in this Answer, the class contended for is improper and if allowed may do substantial injustice to many persons not named in this suit.

12. There is no need for a temporary or permanent injunction nor is either justified under the law. The plaintiffs have adequate remedies at law which they could pursue in the state court proceedings which are still pending in accordance with the statutes and rules of Pennsylvania.

WHEREFORE, the defendant prays that no injunction of any sort be granted, and if granted, it be strictly limited to those portions of the statute relating to replevin with bond and strictly limited as to the class of persons affected thereby and that it have prospective effect only.

The defendant calls to the attention of the Court that because of the institution of this action, it is now limiting its replevin actions in Pennsylvania to replevins without bond. Such procedure does require notice and an opportunity to be heard before actual taking, the defendant has so acted, however, without any admission that the action of replevin with bond is unconstitutional.

Respectfully submitted,

/s/ Robert F. Maxwell

/s/ Harry L. Devoe

Attorneys for Sears, Roebuck  
and Co. Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA BELL ANDREWS WASHINGTON, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Prothonotary of the Court of Common Pleas of Philadelphia County; WILLIAM M. LENNOX, individually and as Sheriff of Philadelphia County; LEWIS WASHINGTON; GOVERNMENT EMPLOYEES EXCHANGE CORP.; SEARS, ROEBUCK AND CO., DEFENDANTS

MOTION FOR SUMMARY JUDGMENT FILED BY SEARS,  
ROEBUCK AND CO.—Filed October 13, 1970

Defendant, Sears, Roebuck and Co., hereby moves the Court to enter Summary Judgment against the plaintiffs Paul Parham and Ellen Parham and in favor of Sears, Roebuck and Co. for the following reasons:

1. The only act complained of in the Complaint of the Parhams is that they were wrongfully deprived of possession of certain property.
2. Paragraphs 26, 27 and 28 of the Complaint admit that the property had been obtained by the plaintiffs from Sears, Roebuck and Co. and that they had defaulted on the payments due on said property to Sears, Roebuck and Co.
3. Paragraphs 26, 27 and 28 of the Answer to the Complaint filed by Sears, Roebuck and Co. likewise aver that there was such default. Further, such paragraphs make clear that the plaintiff, Ellen Parham, was not a party to the transaction between Sears and the plaintiff Paul Parham and therefore had and has no right in the property whatsoever. The said paragraphs of the An-

swer together with the Exhibit attached to the Answer make clear that the plaintiff, Paul Parham, did not own the goods replevied and that at the time of the replevin, had no right to possession thereof because of his violations of the terms of the security agreement he had executed in accordance with the provisions of the Uniform Commercial Code of Pennsylvania. At the time of the replevin and for sometime prior thereto (in fact as long ago as March 1970) he had been violating the rights of the defendant—owner of the goods—in its right to possession thereof. He had had notice of his defaults and had, on several occasions, been requested to yield possession of the said goods.

4. The essential factual contention on which the Prayers of the Complaint are based are that goods belonging to the plaintiff Parham and in which he had a right of lawful possession were taken from him. As stated above, the pleadings themselves show that at the time of the replevin and now he had no right of ownership or possession and was in fact violating the rights of the defendant to title and possession. Because the pleadings do show the said facts and because the facts cannot be denied by the plaintiff, the Court, as a matter of justice and equity, should issue immediate summary judgment as prayed for herein.

/s/ Robert F. Maxwell

/s/ Harry L. Devoe, Jr.  
Attorneys for Sears, Roebuck  
and Co.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

vs.

AMERICO V. CORTESE, ET AL., DEFENDANTS

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT—  
Filed October 19, 1970

Pursuant to Rule 56 of the Federal Rules of Civil Procedure plaintiffs move the Court to enter Summary Judgment against all defendants and in favor of all plaintiffs, the record before the Court clearly indicating that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law.

Respectfully,

/s/ Joel G. Weisberg  
JOEL G. WEISBERG

/s/ David A. Scholl  
DAVID A. SCHOLL

/s/ Harold I. Goodman  
HAROLD I. GOODMAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

*vs.*

AMERICO V. CORTESE, ET AL., DEFENDANTS

MOTION—Filed October 19, 1970

Pursuant to F.R.C.P. 12(b) plaintiffs move for the dismissal of defendant Government Employees Exchange Corporation's Counterclaim on the grounds that this Court lacks jurisdiction over the subject matter of that counterclaim.

The jurisdiction of this Court has been invoked under 28 U.S.C. § 1343 and 42 U.S.C. § 1983 solely for the purpose of determining the constitutionality of the acts and rules providing for replevin with bond, the merits of any creditor's claim is not here in issue and would not be affected by any determination of this Court.

WHEREFORE, plaintiffs pray that defendant Government Employees Exchange Corporation's Counterclaim be dismissed.

Respectfully submitted,

/s/ Joel G. Weisberg

/s/ David A. Scholl

/s/ Harold I. Goodman

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

vs.

AMERICO V. CORTESE, ET AL., DEFENDANTS

MOTION—Filed October 19, 1970

Pursuant to 28 U.S.C. § 2284 and based upon the record before the Court, and for the reasons set forth in plaintiffs motion for a temporary restraining order, plaintiffs move the Court for a preliminary injunction restraining defendants Lennox and Cortese from further issuance and execution of writs of replevin with bond until such time as this Court may finally determine the merits of the claim before it.

Respectfully submitted,

/s/ Joel G. Weisberg  
JOEL G. WEISBERG

/s/ David A. Scholl  
DAVID A. SCHOLL

/s/ Harold I. Goodman  
HAROLD I. GOODMAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA  
BELL ANDREWS WASHINGTON, on behalf of themselves  
and all others similarly situated, PLAINTIFFS

vs.

AMERICO V. CORTESE, ESQUIRE, individually and as Prothonotary of the Court of Common Pleas of Philadelphia County, 288 City Hall, Philadelphia, Pennsylvania; and WILLIAM M. LENNOX, individually and as Sheriff of Philadelphia County, Third Floor, City Hall, Philadelphia, Pennsylvania; LEWIS WASHINGTON, 4228 Girard Avenue, Philadelphia, Pennsylvania; GOVERNMENT EMPLOYEES EXCHANGE CORP., Kaign Avenue and Crescent Blvd., Pennsauken, New Jersey; and SEARS, ROEBUCK AND COMPANY, Adams and Whitaker Avenues, Philadelphia, Pennsylvania; on behalf of themselves and all others similarly situated, DEFENDANTS

## DEFENDANTS' MOTION TO DISMISS COMPLAINT—

Filed October 20, 1970

Defendants herein, AMERICO V. CORTESE, ESQUIRE, individually and as Prothonotary of the Court of Common Pleas of Philadelphia County, and WILLIAM M. LENNOX, individualy and as Sheriff of Philadelphia County, by their attorneys, LEVY ANDERSON, City Solicitor of the City of Philadelphia, and HARRY WOLOV, Deputy City Solicitor, file the within Motion to Dismiss Complaint in the above matter and allege as follows:

1. The Complaint fails to state a claim upon which relief may be granted.

CITY OF PHILADELPHIA  
LEVY ANDERSON  
City SolicitorBy: /s/ Harry Wolov  
Deputy City Solicitor

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

PAUL and ELLEN PARHAM, on behalf of themselves and  
all others similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQ., ET AL., DEFENDANTS

STIPULATION—Filed November 10, 1970

AND NOW, this 4th day of November, 1970, it is  
hereby stipulated by and between counsel for Plaintiffs  
and attorneys for the Defendant, Sears, Roebuck and  
Co., as follows:

1. On February 1, 1969 the Plaintiff, Paul Parham,  
and the Defendant, Sears, Roebuck and Co., did enter  
into a certain transaction, evidenced by Exhibit "A",  
which is attached hereto and made a part hereof. The  
Plaintiff, Ellen Parham, was not a party to the said  
transaction.
2. The goods listed in Exhibit "A" were delivered to  
the Plaintiff, Paul Parham, and retained by him in his  
home, 611 North 54th Street, Philadelphia, Pennsylvania,  
until they were replevied by the Sheriff of Philadelphia  
County as hereinafter explained. The Plaintiff, Ellen  
Parham, is the wife of the Plaintiff, Paul Parham, and  
lived at the same address at all times mentioned herein.
3. The agreement attached as Exhibit "A" complies  
with the provisions of the Uniform Commercial Code  
of Pennsylvania and the Goods and Services Installment  
Sales Act of that State.
4. There is attached hereto and made a part hereof,  
as Exhibit "B", the payment record of the Plaintiff,  
Paul Parham, which shows that there were defaults on  
his part as to the agreement of February 1, 1969.

5. There were nine (9) telephone calls made by the Defendant or its representatives to the Plaintiff and there were five (5) written communications also sent, copies of which are attached and made a part hereof as Exhibits "C", "D", "E", "F" and "G", respectively. The dates on which such written communications were sent are respectively: May 16, 1970, May 22, 1970, June 22, 1970, July 22, 1970 and August 19, 1970. There were also two (2) personal visits to the home of the Plaintiff. All of these telephone calls, letters and visits concerned the problem of the account and its status.

6. On September 11, 1970 a Writ of Replevin With Bond was issued by the Prothonotary of Philadelphia County, copy of the said Writ being attached hereto and made a part hereof, as Exhibit "H". This Writ was issued on behalf of the Defendant, Sears, Roebuck and Co., upon the filing by it with the Prothonotary of a bond as required by the Replevin Statute and Rules, an entry of appearance by the attorney acting for Sears, Roebuck and Co., and a praecipe for the issuance of the Writ. There was also filed with the Prothonotary an affidavit as to the value of the property on which the amount of the bond, which must be twice the value of the property, was determined. Copy of the Bond, as filed, is attached hereto and made a part hereof, as Exhibit "I". Copy of the Affidavit is part of Exhibit "H".

7. On September 15, 1970 the goods were removed from the Plaintiffs' home by the Office of the Sheriff of Philadelphia County in accordance with the command of the Writ issued by the Prothonotary and at the said time the original Writ was exhibited to the Plaintiff's wife, Ellen Parham, and a copy of the said Writ was left with her. There was no violence, no breaking and entering, and Ellen Parham admitted the Sheriff to the house for the purpose of executing the Replevin in accordance with the mandate of the Writ.

8. All of the actions taken by the Defendant, Sears, Roebuck and Co., were in accord with the Statutes and Rules relating to Replevin, the Uniform Commercial Code and the Goods and Services Installment Sales Act.

9. The Defendant, Sears, Roebuck and Co., has not filed a Complaint in the Replevin action and the Plaintiff, Paul Parham, has not requested them to do so, which he would have a right to do under the Replevin Rules and Statutes.

10. Prothonotary and Sheriff's dockets show numerous prior Replevin with Bond Actions instituted and executed upon since 1705.

11. Upon the filing of the requisite papers with the Prothonotary, the Prothonotary is required to issue the Writ. Upon delivery of the Writ issued by the Prothonotary, the Sheriff is required to execute the mandate of the Writ.

12. Neither the applicable Replevin With Bond Acts nor Rules expressly set forth that the Sheriff, pursuant to the Writ with Bond, may break and/or enter or that he may not break or enter.

13. The Sheriff or his agents, after seizing and taking possession of the property, must hold it for a period of seventy-two (72) hours, during which time the Defendant on the Writ may reclaim the property if he files a counterbond. The Defendant in the Replevin action may also move to have the original bond adjusted or may also demand a Complaint from the Plaintiff in the Replevin action (which Complaint must be filed within 20 days thereafter) and thus litigate the right to possession and title and the question of any damages he may have sustained due to a wrongful seizure of his goods. The rights of the Defendant as to those remedies listed in the second sentence of this paragraph exist without the filing of a counterbond. If no counterbond is filed, the property will be delivered by the Sheriff to the Plaintiff on the Writ, who will retain possession thereof subject to the rights of the Defendant in the Replevin action during the course of the litigation.

14. It is understood that this action concerns only the action of Replevin With Bond and does not involve the action of Replevin Without Bond.

Plaintiffs' attorney stipulates to the facts contained herein but does not agree to their relevancy.

The Stipulations as to the law are solely for the purpose of attempting to guide the Court. The law, of course, must speak for itself.

/s/ Joel G. Weisberg  
Attorney for Plaintiffs

/s/ Robert F. Maxwell  
Attorney for Defendant,  
Sears, Roebuck and Co.



CREDIT BILLING  
COPY

SEARS, ROEBUCK AND CO.

3025027

Sears

**ACCOUNT  
NUMBER**

NAME  
(PRINT)

**ADDRESS**

## CITY

## SHIPPING

INSTRUCTIONS

S.R.C.	C.L.C.	E.A.A.	M.C.A.	-	E.P.	C.O.D.	CASH	SELLING STORE NO.
DIV.	SALES NO.	DATE - - - -			DELIVERY DATE		NO. OR NAME OF STORE CARRYING ACCOUNT	
							1014	

DIV.	SALES NO.	DATE	DELIVERY DATE	NO. OR NAME OF STORE CARRYING ACCOUNT
1	7615	3/1/69		17-141 APPROVAL Check 946
431219682508			APT.	700
611 No 54th St			PHONE	TR 8-2548
Pittsburgh PA 15213				

Notify Cust B/4 Delivery

This purchase is made under my Sears Revolving Charge Agreement for the credit sales price consisting of the above cash price plus the credit service charge.

Purchased By

X

In stores on Floor Approval, on Easy Payment add-on sales, complete contract on reverse side of Credit Billing copy and Customer copy.

**TOTAL**

٦٣

**DEPOSIT**

## BALANCE

1347.17

CASH SALE PRICE			348	17
DOWN PAYMENT	XXXXXXX			
CASH SALE BALANCE	XXXXXXX		318	17
SERVICE CHARGE			53	50
TIME SALE PRICE	412.47		XXXXXXX	
TIME BALANCE THIS SALE			19	
OLD TIME BALANCE	XXXXXXX			
CONSOLIDATED TIME BALANCE	XXXXXXX		71	16

PLEASE RETURN THIS CHECK IN CASE OF ERROR,  
RETURN OR EXCHANGE.

CREDIT TERMS CODE		DATE
	15	

EMPLOYEE  
SALE

MONTHLY PAYMENTS ~~50~~ DUE ~~15~~

**EASY PAYMENT ORDER** This order is subject to the approval of the Credit Sales Dept. of Sears, Roebuck and Co. There are to be no agreements regarding it, other than those mentioned below or attached hereto in writing.

**SECURITY AGREEMENT**

**SEARS, ROEBUCK AND CO.:** I will Pay \$ 16.20 each month for 24

months and a final payment of \$ 16.20. All payments will be due on the same day of each month. The reverse side of this sheet constitutes a part of this contract. All payments will be due on the same day of each month. The reverse side of this sheet constitutes a part of this contract. I have risk of loss or damage; (3) I will not sell, transfer possession of, remove, or encumber merchandise; (4) Upon one or more defaults in any terms of this agreement you may declare the entire balance due and payable or you may, at your option, repossess the merchandise. A delinquency charge of five percent (but not more than five dollars (\$5.00) or less than one dollar (\$1.00)) may be assessed on each installment in default for ten days or more. Buyer shall pay actual and reasonable costs of collection occasioned by removal of the goods from Pennsylvania without written permission of Sears, by failure of Buyer to notify Sears of any change of residence, or by failure of Buyer to communicate with Sears for forty-five days after default in any installment. If subsequent purchases are added to this contract, the total price under this contract shall be increased by the price of such purchases; all charges and payments may be increased proportionately; and all terms and conditions of this contract shall apply to all subsequent purchases. The goods purchased under this contract shall be security under any subsequent contract until the time sale price under this contract is fully paid.

THE SERVICE CHARGE HEREIN CONTAINED DOES NOT EXCEED THE EQUIVALENT OF FIFTEEN PERCENT SIMPLE INTEREST PER ANNUM ON THE UNPAID BALANCE, EXCEPT THAT A MINIMUM SERVICE CHARGE OF SEVENTY CENTS (.70) PER MONTH MAY BE MADE. NOTICE TO THE BUYER: (1). DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT, OR IF IT CONTAINS ANY BLANK SPACE. (2). YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT. (3). UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE SERVICE CHARGE.

**RECEIPT OF SECURITY AGREEMENT AND A COPY OF THIS IS ACKNOWLEDGED.**

John C. Galt 16/1/69 Date Signed 2/1/69  
Signature Sears, Roebuck and Co. By

**NOTE:** A memorandum of the amount, number of installments or any other above item that may be incomplete will be furnished within fifteen days.

P-2250 Pa. Rev. 5/67

**Sears "Shop at Sears and Save"**

**SEARS', ROEBUCK AND CO.**

4640 Roosevelt Blvd.

**PHILADELPHIA, PA. 19132**

PLEASE MENTION ACCOUNT NUMBER WHEN WRITING OR SENDING PAYMENT

• Mr. Paul Parham  
611 N. 54th St.  
Phila., Pa. 19131

ACCOUNT NUMBER 4 31219 6c850 1

DATE

DATE	DESCRIPTION	PURCHASES	SERV. CHG.	CREDITS	PATS.	BALANCE
12/69	Amount Past Due					
1/70	00.00					66.00
1/70	16.50					00.00
2/70	33.00					00.00
3/70	49.50					00.00
4/70	66.00					00.00
4/70	49.50					33.00
5/70	61.00					5.00
6/70	77.50					00.00
8/70	69.00					25.00
9/70	65.50					20.00
						154.47

Exhibit "B"

PAYMENT DATES SHOW WHEN PAYMENTS WERE RECEIVED BY SEARS

**SHOP AT SEARS AND SAVE**

CONTACT COLLECTION MANAGER IMMEDIATELY TO  
PREVENT REPORTING YOUR DELINQUENT ACCOUNT  
TO LOCAL CREDIT BUREAUS.

MR. PAUL PARHAM  
611 N. 54TH ST.  
PHILA., PA. 19131

ACCT. NO. 4 31219 68850 1  
BALANCE \$237.47  
NOW DUE \$99.00  
TELEPHONE JE 3 9966

SEARS, ROEBUCK AND CO. EXHIBIT "C"

PF24553 ESC

## SEARS MAILGRAM

WRIT HAS BEEN ISSUED DUE TO FAILURE TO RELEASE  
MERCANDISE.

MR. PAUL PARHAM  
611 N. 54TH ST.  
PHILA., PA. 19131

ACCT. # 4 31219 68850 1  
BALANCE \$237.47  
PAST DUE \$82.50  
TELEPHONE # JE 3 9966

SEARS, ROEBUCK AND CO. EXHIBIT "D"

PF24553 ESC

NO. 9A

## SEARS MAILGRAM

YOU HAVE TEN DAYS TO RESOLVE YOUR DELINQUENT  
ACCOUNT OR ATTORNEY ACTION.

MR. PAUL PARHAM  
611 N. 54TH ST.  
PHILA., PA. 19131

ACCT. NO. 4 31219 68850 1  
TELEPHONE JE 3 9966

SEARS, ROEBUCK AND CO. EXHIBIT "E"

PF24553 ESC

# SEARS MAILGRAM

IMPORTANT YOU MAKE PAYMENT ON YOUR ACCOUNT  
WITHIN 24 HOURS.

## CREDIT SALES DEPARTMENT

MR. PAUL PARHAM

611 N. 54TH ST.

PHILA., PA. 19131

Telephone No. JE 3-9966

4 31219 68850 1  
Balance \$199.47  
Past Due \$61.00

**SEARS, ROEBUCK AND CO. EXHIBIT "F"**

PF24556 E3B

# SEARS MAILGRAM

ATTEMPTS TO RESOLVE PAST DUE CONDITION OF YOUR  
ACCOUNT HAVE FAILED. LITIGATION PENDING TO  
RECLAIM OUR MERCHANDISE.

CONTACT COLLECTION MANAGER IMMEDIATELY.

MR. PAUL PARHAM

4 31219 68850 1

611 N. 54TH ST.

PHILA., PA. 19131

Past Due \$77.50  
Balance \$199.47

**SEARS, ROEBUCK AND CO. EXHIBIT "G"**

PF24553 E3C



## EXHIBIT "H"

Replevin With Bond

THE COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

C. P.

COUNTY COURT

SEPTEMBER TERM, 1970

No. 737

SEARS, ROEBUCK AND CO.

vs.

PAUL PARHAM, 611 North 54th St., Phila., Pa.

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA:

YOU ARE DIRECTED to replevy the following property<sup>(1)</sup>:

One (1) Harmony House Table #4S and 4 stools

One (1) Harmony House Divan Bed, #48087

You are directed to notify<sup>(2)</sup>: PAUL PARHAM, Defendant(s), that<sup>(3)</sup> SEARS, ROEBUCK AND CO., Plaintiff(s), has (have) commenced an Action of Replevin With Bond, which said Defendant(s) is (are) required to defend.

If the property replevied is found in the possession of anyone not a Defendant, you are directed to notify him

---

<sup>(1)</sup> Specifically describe property.<sup>(2)</sup> Name(s) of Defendant(s).<sup>(3)</sup> Name(s) of Plaintiff(s).

that he has been added as a Defendant, and is required to defend the action.

AMERICO V. CORTESE  
Prothonotary

By /s/ J. Gargiulo  
Clerk

Date Sep. 11, 1970

A TRUE COPY

Attest:

/s/ C. Dewdy & G. Edwardy  
Deputy Sheriff

737

SEPTEMBER TERM

1970

C. P.

IN THE COUNTY COURT OF PHILADELPHIA

SEARS, ROEBUCK AND Co.  
Adams & Whitaker Ave.  
Phila., Penna.

—v8—

PAUL PARHAM  
611 North 54th Street  
Phila., Penna.

REPLEVIN  
WITH BOND

\$00.00

ANTHONY W. NOVASITIS, JR.  
1004 [Illegible] Bldg.  
N.W. Cor. 15th & Chestnut Sts.  
Phila., Pa. 19102  
LO 8-1587

## EXHIBIT "H"

COURT OF COMMON PLEAS OF PHILA. COUNTY  
SEPTEMBER TERM, 1970

No. 737

SEARS, ROEBUCK AND Co., Adams & Whitaker Ave.,  
Phila., Pennsylvania

—v8—

PAUL PARHAM, 611 North 54th St., Phila., Penna.

PRAECIPE FOR WRIT OF REPLEVIN WITH BOND  
TO THE PROTHONOTARY:

Kindly issue Writ of Replevin with Bond for the following described personal property Ret. Sec. Leg.

One (1) Harmony House Table #4S and 4 stools  
One (1) Harmony House Divan Bed, #48087ANTHONY W. NOVASITIS, JR.  
Attorney for Plaintiff

## AFFIDAVIT OF VALUE

I, ANTHONY W. NOVASITIS, JR., being duly sworn according to law, depose and say that I am attorney-in-fact for the above named corporation, and that I am duly authorized to take this affidavit on its behalf, and that the value of the said goods herein contained is \$250.00.

AS ABOVE.

ANTHONY W. NOVASITIS, JR.

Sworn to and Subscribed before me this 10th day of Sept., 1970.

Notary Public

My Commission Expires:

[SEAL]

DOROTHY M. KEGLER

[Illegible]

## EXHIBIT "I"

## REPLEVIN BOND

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

SEPT. TERM, 1970

No. 737

SEARS, ROEBUCK AND Co.

vs.

PAUL PARHAM, 611 N. 54th Street, Philadelphia, Penna.

KNOW ALL MEN BY THESE PRESENTS, that we  
Sears, Roebuck & Co. Principal(s) Address \_\_\_\_\_  
and Fidelity and Deposit Com-  
pany of Maryland Surety(ies) Address 2800 Two Gir-  
ard Plaza, Phila., Pa. are held and firmly bound unto  
the Commonwealth of Pennsylvania as obligee in the  
sum of Five hundred and 00/100 (\$500.00)--- Dollars,  
lawful money of the United States of America, to which  
payment well and truly to be made, we do bind ourselves,  
our heirs, executors, administrators, successors and as-  
signs, jointly, severally, firmly by these presents.

WHEREAS, the plaintiff(s) in the above named action  
has (have) instituted an action of replevin by writ with  
bond to the said court term and number against the  
defendant(s); AND,

NOW THE CONDITION OF THIS OBLIGATION IS  
SUCH, That if the plaintiff(s) fail(s) to maintain his  
(her) (their) (its) right of possession of the property,  
he (she) (they) (it) shall pay to the party(ies) en-  
titled thereto the value of the property and all legal  
costs, fees and damages sustained by reason of the issu-  
ance of the said writ of replevin with bond, then this  
obligation shall be void; otherwise it shall remain in full  
force and virtue.

Dated this 4th day of September, 1970

SEARS, ROEBUCK & Co. [SEAL]

By: /s/ Anthony W. Novasitis, Jr. [SEAL]  
P/A 3247  
FIDELITY AND DEPOSIT [SEAL]  
COMPANY OF MARYLAND

By: /s/ Mary E. Lay [SEAL]  
MARY E. LAY  
Attorney-in-fact  
P/A #8295

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

v.

AMERICO V. CORTESE, ET AL., DEFENDANTS

STIPULATION—Filed November 10, 1970

AND NOW, this 26th day of October, 1970, it is hereby stipulated and agreed between counsel for Plaintiffs and counsel for Defendants Americo V. Cortese, Prothonotary of the Courts of Common Pleas of Philadelphia County, and William M. Lennox, Sheriff of the County of Philadelphia, that:

1. Writs of replevin with bond have been issued by Defendant Cortese or his agents and executed upon by Defendant Lennox or his agents against the following named plaintiffs in the Court of Common Pleas of Philadelphia County in the following respective terms and at the following respective docket numbers:

a. Mitchell Epps, August Term, 1970, No. 4082;  
b. Paul Parham, September Term, 1970, No. 737;  
c. Rosa Bell Andrews Washington, September Term, 1970, No. 1154.

2. Writs of replevin with bond have been issued by the Prothonotary of Philadelphia County or his agents and executed upon by the Sheriff of Philadelphia County or his agents against numerous other individual residents of the Commonwealth of Pennsylvania since 1705.

3. Writs of replevin will continue to be so issued and executed upon by the respective Defendants or their agents against numerous additional individual residents of the Commonwealth of Pennsylvania upon the presen-

tation by any claimant of the requisite documents in accordance with the acts of assembly and the Pennsylvania Rules of Civil Procedure made and provided for in such cases unless and until this court enjoins such actions.

4. To obtain a writ of replevin with bond, the party seeking such a writ need file with Defendant Cortese or his agents the following and the following only:

- a. A praecipe for a writ of replevin with bond;
- b. An affidavit of the value of the property to be replevied; and
- c. A bond in double the value of the property.

5. Defendant Cortese or his agents do not and are not authorized to, request from the party seeking a writ of replevin with bond any information concerning his alleged justification for demanding the execution of a writ. They are simply required to issue the writ to Defendant Lennox or his agents for execution if the three items cited in the foregoing paragraph are duly filed with them.

6. Neither Defendant Cortese or his agents nor Defendant Lennox or his agents supply any notice, whether formal or informal, to the defendants on writs of replevin with bond prior to execution, nor is any such notice required.

7. Defendant Lennox or his agents, upon the issuance of writ of replevin with bond by Defendant Cortese or his agents, are required to execute upon the writ forthwith.

8. Defendant Lennox or his agents, when executing upon a writ of replevin with bond, are required to enter the home of the defendant on the writ and to seize with or without the consent of the defendant any and all of the property cited in the writ.

9. Neither Defendant Lennox or his agents make any determination concerning the rights of the plaintiff on the writ to possess the defendant's property and they are neither required or even permitted to hear or determine any issues of either the plaintiff's or the defendant's rights to the property.

10. Defendant Lennox or his agents, after seizing and taking possession of the property, must hold it for a period of seventy-two (72) hours, during which time the defendant on the writ may reclaim the property if he files a counterbond.

11. The form of writ required by rule of court contains no notice to the defendant on the writ that he may recover the property through the procedure set out in the foregoing paragraph.

12. If the defendant on the writ fails to file the counterbond within the 72-hour period, Defendant Lennox or his agents are required to deliver the property seized to the plaintiff on the writ.

/s/ Joel G. Weisberg  
Attorney for Plaintiffs

/s/ Harry Wolov  
Attorney for Defendants  
Americo V. Cortese  
William M. Lennox

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, ET AL., PLAINTIFFS

vs.

AMERICO V. CORTESE, ET AL., DEFENDANTS

STIPULATION—Filed November 10, 1970

AND NOW, this 9th day of November, 1970, it is hereby Stipulated by and between counsel for plaintiffs and counsel for defendant, Government Employees Exchange Corporation that:

1. Writs of replevin with bond have been issued by defendant Cortese or his agents and executed upon by defendant Lennox or his agents against the following named plaintiffs in the Court of Common Pleas of Philadelphia County in the following respective docket numbers:

a. Mitchell Epps, August Term, 1970, No. 4082;  
b. Paul Parham, September Term, 1970, No. 737;  
c. Rosa Bell Andrews Washington, September Term, 1970, No. 1154.

2. Prothonotary and Sheriff's dockets show numerous prior replevin with bond actions instituted and executed upon since 1705.

3. Under statutes and rules regulating the issuance of writs of replevin, defendants, Prothonotary and Sheriff are required to execute writs upon the presentation by any claimant of the requisite documents, in accordance with the Acts of Assembly and the Pennsylvania Rules of Civil Procedure made and provided for in such cases.

4. To obtain a writ of replevin with bond, the party seeking such a writ need file with defendant Cortese or his agents the following and the following only:

- a. An Entry of Appearance;
- b. A Praecept for a writ of replevin with bond;
- c. An affidavit of the value of the property to be replevied; and
- d. A bond in double the value of the property.

5. The Prothonotary or his agents do not and are not authorized to request from the party seeking a replevin with bond, any information concerning their alleged justification for demand in the execution of a writ. The Prothonotary is simply required to issue the writ to the Sheriff or his agent for execution if the four (4) items cited in paragraph 4 above are in proper order and duly filed.

6. Neither the Prothonotary or the Sheriff are required, under the Replevin with Bond Acts or applicable rule, to give notice of any kind to the defendant therein prior to the execution of said writ.

7. Upon the issuance of the writ of replevin with bond by the Prothonotary, the Sheriff is required to execute upon said writ forthwith.

8. Neither the applicable Replevin with Bond Acts nor rules expressly set forth that the Sheriff pursuant to the writ with bond may break and/or enter or that he may not break or enter.

9. In none of the individual cases did the Sheriff break and enter into the premises of plaintiffs.

10. Neither the Sheriff nor his agent have any discretion in determining the underlying transaction giving rise to the replevin with bond action.

11. The Sheriff or his agents, after seizing and taking possession of the property, must hold it for a period of seventy-two (72) hours, during which time the defendant on the writ may reclaim the property if he files a counterbond.

12. The form of the writ required by C. P. Rule 1354, contains no notice to the defendant, on the writ, that

he may recover the property by posting a counterbond, nor does it expressly prohibit said notice.

13. If the defendant on the writ fails to file the counterbond within the seventy-two (72) hour period, the Sheriff or his agents are required to deliver the property seized to the plaintiff on the writ, subject to Rule 1079 dealing with impounding.

14. All of the exhibits attached to defendant, Government Employees Exchange Corporation's Answer and Counterclaim, were signed by plaintiff, Epps and all of the exhibits entitled "Retail Installment Contract-Security Agreement", contained inter-alia, the following:

"You or assigns shall retain title to said merchandise; I will be responsible for its loss or damage; I will not remove or encumber same; if I default in any payment or breach any covenant herein, the entire balance shall be immediately due and payable and you or assigns may retake the merchandise, sell the same and hold me for any deficiency, or affirm the sale and hold me liable for the unpaid balance . . . Notice to Buyer:

1. Do not sign this contract before you read it or if it contains any blank spaces."

15. Plaintiff Epps, at the time of the institution of the replevin action, earned in excess of Ten Thousand Dollars (\$10,000.00) per year.

16. The enclosed credit application, attached hereto and made a part hereof, contains the information given by plaintiff, Epps, to defendant, Government Employees Exchange Corporation, on or about April 18, 1968.

Plaintiffs' attorney stipulates to the facts contained herein but does not agree to their relevancy.

/s/ Joel G. Weisberg  
Attorney for Plaintiffs

/s/ Ronald Jay Bayer  
Attorney for Defendant  
Government Employees Exchange  
Corporation

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA  
BELL ANDREWS WASHINGTON, on behalf of themselves  
and all others similarly situated

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Pro-  
thonotary of the Court of Common Pleas of Phila-  
delphia County, 228 City Hall, Philadelphia, Pennsyl-  
vania; and WILLIAM M. LENNOX, individually and as  
Sheriff of Philadelphia County, Third Floor, City Hall,  
Philadelphia, Pennsylvania; LEWIS WASHINGTON, 4228  
Girard Avenue, Philadelphia, Pennsylvania; GOVERN-  
MENT EMPLOYEES EXCHANGE CORP., Kaign Avenue  
and Crescent Blvd., Pennsauken, New Jersey; and  
SEARS, ROEBUCK AND COMPANY, Adams and Whitaker  
Avenues, Philadelphia, Pennsylvania; on behalf of  
themselves and all other similarly situated

OPINION—March 31, 1971

Before J. CULLEN GANEY, Judge, Circuit Court; E. MAC  
TROUTMAN and JOHN B. HANNUM, Judges, Dis-  
trict Court

TROUTMAN, J.

Plaintiffs challenge the constitutionality of those Penn-  
sylvania statutes and rules of civil procedure which pro-  
vide for the civil action of replevin with bond. Act of  
1705, 1 Sm. L 44, § 12, 12 P.S. § 1821, and April 19,  
1901, P.L. 88, as amended, 12 P.S. § 1824-5; Pennsyl-  
vania Rules of Civil Procedure 1071-1087.<sup>1</sup>

---

<sup>1</sup> The Pennsylvania statutes and rules of civil procedure relating to replevin without bond are not in question and are not challenged.

Plaintiffs seek a permanent injunction restraining the defendant Cortese, Prothonotary of the Courts of Philadelphia County, and the defendant Lennox, Sheriff of Philadelphia County, from issuing and executing upon any and all writs of replevin with bond. Since the complaint places in issue the constitutionality of statutes and rules of state-wide application, this statutory three-judge court has been convened pursuant to the provisions of 28 U.S.C. §§ 2281-84.

The individual plaintiffs are citizens and residents of Philadelphia, Pennsylvania, from whom goods or chattels have been seized pursuant to writs of replevin with bond duly issued and executed respectively by the Prothonotary and Sheriff of Philadelphia County. The corporate defendants, Government Employees Exchange Corporation, and Sears, Roebuck & Company, are creditors who caused two of the writs in question to be issued. The remaining defendant, Lewis Washington, is an individual Pennsylvania resident.

The matter is presently before the Court upon a stipulated record as if on final hearing by agreement of counsel. Presently before the Court for disposition are cross-motions for summary judgment. The facts as stipulated to and agreed upon by and among the parties<sup>2</sup> are as follows:

1. Writs of replevin with bond have been issued by defendant Cortese or his agents and executed upon by defendant Lennox or his agents against the following named plaintiffs in the Court of Common Pleas of Philadelphia County:

- (a) Mitchell Epps, August Term 1970, No. 4082;
- (b) Paul Parham, September Term 1970, No. 737;
- (c) Rosa Bell Andrews Washington, September Term 1970, No. 1154.

<sup>2</sup> There has been no stipulation as to defendant Washington. However, his uncontradicted testimony establishes that the property replevied, consisting of a bed, lamp, bicycle and other items, was owned by him and used by his son, of whom he had custody following divorce proceedings and separation from his wife. (See transcript of proceedings on September 25, 1970.) He recovered only that which was his for use by his son living with him.

2. Writs of replevin with bond have been issued by the Prothonotary of Philadelphia County or his agents and executed upon by the Sheriff of Philadelphia County or his agents, against numerous other individual residents of the Commonwealth of Pennsylvania since 1705.

3. Under the statutes and rules regulating the issuance of writs of replevin with bond, the Prothonotary and Sheriff are required to issue and execute the writs upon the presentation by any claimant of the requisite documents in accordance with the Acts of Assembly and the Pennsylvania Rules of Civil Procedure applicable to such cases.

4. To obtain a writ of replevin with bond, the party seeking such a writ need file with the Prothonotary or his agents the following documents:

- (a) An entry of appearance;
- (b) A praecipe for a writ of replevin with bond;
- (c) An affidavit of the value of the property to be replevied; and
- (d) A bond in double the value of the property.

5. The Prothonotary or his agents do not and are not authorized to request from the party seeking replevin with bond any information concerning their alleged justification for demand in the execution of a writ.

6. Neither the Prothonotary nor the Sheriff are required, under the Replevin With Bond Acts and rules, to give notice of any kind to the defendant named in the writ other than service of the writ itself.

7. The Sheriff, or his agents, upon the issuance of a writ of replevin with bond by the Prothonotary, or his agents, is required to execute upon the writ forthwith.

8. The Sheriff, or his agents, when executing upon a writ of replevin with bond, is required to enter the home of the defendant on the writ and to seize with or without consent of the defendant any and all of the property named in the writ.

9. Neither the Replevin With Bond Act nor the rules expressly set forth that the Sheriff, pursuant to the writ with bond, may forcibly break and enter or that he may not break or enter.

10. In none of the individual cases did the Sheriff forcibly break and enter into the premises of plaintiffs.

11. Neither the Sheriff nor his agents have any discretion in determining the underlying transaction giving rise to the replevin with bond action. They are not required or permitted to hear or determine any issues of the rights of either of the parties to the property in question.

12. The Sheriff, or his agents, after seizing and taking possession of the property named in the writ, must hold it in his custody for a period of seventy-two hours, during which time the defendant named on the writ may regain possession of the property by filing a counter-bond in the same amount as the original bond.

13. The form of the writ required by Pennsylvania Rules of Civil Procedure, Rule 1354, contains no notice to the defendant that he may recover the property by posting a counter-bond, nor does it expressly prohibit this notice.

14. If the defendant on the writ fails to file the counter-bond within the seventy-two hour period, the Sheriff, or his agents, is required to deliver the property seized to the plaintiff on the writ, subject to Rule 1079 dealing with impounding.

15. The plaintiff, Epps, and the defendant, Government Employees Exchange Corporation, are the parties to a contract entitled "Retail Installment Contract—Security Agreement" which provides, *inter alia*, the following:

"You or assigns shall retain title to said merchandise; I will be responsible for its loss or damage; I will not remove or encumber same; if I default in any payment or breach any covenant herein, the entire balance shall be immediately due and payable and you or assigns may retake the merchandise, sell the same and hold me for any deficiency, or affirm the sale and hold me liable for the unpaid balance . . . Notice to buyer:

1. Do not sign this contract before you read it or if it contains any blank spaces."

16. The property named in the writ to be replevied from plaintiff Epps consisted of one G. E. stereo, two wedding rings, a diamond watch and band and a T.V. roof antenna.

17. Plaintiff Epps, at the time of the institution of the replevin action, earned in excess of \$10,000 per year.

18. On February 1, 1969, the plaintiff, Paul Parham, and the defendant, Sears, Roebuck and Co., entered into a similar retail credit contract also providing that the seller retain title in the goods sold and that upon default the seller may at his option repossess the goods. The plaintiff, Ellen Parham, was not a party to the contract.

19. A Harmony House table and four stools and a divan bed were delivered to the plaintiff, Paul Parham, and possession was retained by him in his home until the goods were replevied by the Sheriff of Philadelphia County.

20. The agreements entered into by plaintiffs Epps and Parham comply with the provisions of the Uniform Commercial Code of Pennsylvania and the Goods and Services Installment Sales Act.

21. The payment record of the plaintiff, Paul Parham, shows that there were defaults on his part as to the agreement of February 1, 1969.

22. There were nine (9) telephone calls made by the defendant, Sears, or its representatives, to Mr. Parham and five (5) written communications were also sent. The dates on which such written communications were sent are respectively: May 16, 1970, May 22, 1970, June 22, 1970, July 22, 1970, and August 19, 1970. There were also two (2) personal visits to the home of the plaintiff. All of these telephone calls, letters and visits concerned the problem of the account and its status.

23. On September 11, 1970, a Writ of Replevin with Bond was issued by the Prothonotary of Philadelphia County on behalf of the defendant, Sears, Roebuck and Co., upon the filing by it with the Prothonotary of a bond as required by the Replevin Statutes and Rules, an entry of appearance by the attorney acting for Sears, Roebuck and Co., and a praecipe for the issuance of the writ. There was also filed with the Prothonotary an affidavit

stating that the value of the property was \$250.00. A bond in the amount of twice the value of the property was also filed.

24. On September 15, 1970, the goods were removed from the home by the office of the Sheriff of Philadelphia County in accordance with the command of the writ. At that time, the original writ was exhibited to the plaintiff's wife, Ellen Parham, and a copy of the said writ was left with her. There was no violence, no breaking and entering, and Ellen Parham admitted the Sheriff to the house for the purpose of executing the replevin in accordance with the mandate of the writ.

25. The defendant, Sears, Roebuck and Co., has not filed a complaint in the replevin action and the plaintiff, Paul Parham, has not requested it to do so, which he would have a right to do under the Replevin Rules and Statutes.

## I.

### JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1343, 42 U.S.C. § 1983, 28 U.S.C. § 2281-84, and 28 U.S.C. § 2201-02 seeking to redress alleged deprivations, under color of state law, of rights, privileges and immunities secured by the Federal Constitution. More particularly, plaintiffs complain that the Pennsylvania statutes and rules relating to replevin with bond are unconstitutional on their face in that they:

1. Authorize prejudgment seizure of goods or chattels without notice and prior to any judicial determination in violation of the due process clause of the Fourteenth Amendment;
2. Subject plaintiffs to unreasonable searches and seizures without a warrant in violation of the prohibitions of the Fourth Amendment, and
3. Require the posting of a counter-bond in twice the amount of the property replevied which has the effect of denying low-income individuals access to the courts and, therefore, equal protection of the laws.

A careful reading of the allegations in the plaintiffs' complaint indicates that substantial constitutional issues are raised. It is contended, however, that plaintiffs' claims are not cognizable under 28 U.S.C. § 1343 (3) because they are all "dependent for their existence upon the infringement of property rights". *Hauge v. C.I.O.*, 307 U.S. 496, 531 (1939) (Stone, J. concurring); *Eisen v. Eastman*, 421 F. 2d 560 (2d Cir. 1969); see also *National Land Investment Co. v. Specter*, 428 F. 2d 91, 98-100 (3rd Cir. 1970) (*dictum*); *Lynch v. Household Finance Corp.*, 318 F. Supp. 1111 (D. Conn. 1970). But see *Joe Louis Milk Co. v. Hershey*, 243 F. Supp. 351, 354 (N.D. Ill. 1965); Note, *The Proper Scope of the Civil Rights Acts*, 66 Harv. L. Rev. 1285 (1953). At least one of the plaintiffs' claims, namely, the right to be free from unreasonable searches and seizures, has been held to be squarely within the purview of the Civil Rights Act. *Monroe v. Pape*, 365 U.S. 167 (1960). Plaintiffs' allegations in this respect would be sufficient to confer jurisdiction under the Civil Rights Act, as there is no question that the Sheriff or his deputies here act under color of State law in executing the writs. See *Monroe v. Pape*, *supra*. We need not be concerned with an evaluation of the advantages or disadvantages of a broad or narrow construction of Justice Stone's *Hauge* formulation at this point since there is alleged in this complaint a valid basis for Federal jurisdiction. As we view the remaining allegations, apart from the Fourth Amendment, they state, as alleged, grounds in some respects similar to those recently ruled upon by the Supreme Court. See *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Rosado v. Wyman*, 397 U.S. 254 (1970); *Shapiro v. Thompson*, 374 U.S. 618 (1969); *Snidach v. Family Finance Corp.*, 395 U.S. 337 (1969); *King v. Smith*, 392 U.S. 309 (1968). See also *Santiago v. McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970) and *Escalera v. N.Y.C. Housing Authority*, 425 F. 2d 853 (2d Cir. 1970).

## II.

## CLASS ACTION

Plaintiffs, pursuant to Fed. R. Civ. P. 23, seek to have this action maintained as a class action. They seek to define the class as all residents of the Commonwealth of Pennsylvania who are or may be subject to the issuance of writs of replevin with bond. Since plaintiffs have narrowly delimited the thrust of their argument so as to only challenge the constitutionality of the Pennsylvania statutes and rules on their face and not as applied, we find it unnecessary to make a determination of the class. If the Court were to give plaintiffs the relief they request and ultimately rule that the statutes and rules in question are unconstitutional on their face, such a ruling would, in any event, determine the validity of the statute as it applies to all Pennsylvania residents. We, therefore, need not and do not indulge in an unnecessary analysis of the arguments and authorities cited on this issue, but shall turn to the merits of the case.

## III.

## CONSTITUTIONALITY

Undoubtedly, plaintiffs here challenge a remedy of ancient origin, indeed one of the earliest remedies known to the common law. J. Cobbey, *A Practical Treatise on the Law of Replevin* § 1, at 1 (2d Ed. 1900). The action of replevin is designed to permit one having the right to possession to recover property *in specie* from one who has either wrongfully taken or detained the property in question. At early common law a form of replevin with bond was considered to be a tenant's sole remedy against a landlord who had wrongfully distrained his goods.<sup>3</sup>

The Pennsylvania Replevin statute, 18 P.S. § 1821, permits writs of replevin in "all cases whatsoever, where replevin may be granted by the laws of England"; how-

<sup>3</sup> The common-law procedure has recently been detailed by a member of our Court in *Santiago v. McElroy, supra*, at n.5.

ever, the procedural aspects which are the subject of challenge here have subsequently been established in Pennsylvania Rules of Civil Procedure 1071-87.<sup>4</sup>

Under the Pennsylvania practice, the action with bond is commenced by the filing of a praecipe for a writ of replevin accompanied by an affidavit stating plaintiff's determination of the value of the property and a bond in double that value.<sup>5</sup> Pa. R. Civ. P. 1073 (a). A complaint is not required to be filed. The Sheriff is required to serve the writ describing the property upon the defendant and any person found in possession of the property and is required to take possession of the property described, Pa. R. Civ. P. 1074, unless the plaintiff on the writ permits the property to remain in the hands of the defendant. Pa. R. Civ. P. 1073. The Sheriff is required to hold the property for a period of seventy-two hours within which time the defendant may regain possession by filing a counter-bond with the Prothonotary in the same amount as the original bond. Pa. R. Civ. P. 1076. When a plaintiff petitions the Court during the pendency of the action stating either that the property cannot be located or has been concealed or removed, the Court may order the defendant examined as to the whereabouts of the property and may order that the property be delivered to the Sheriff. Pa. Civ. P. 1081. Where no counter-bond is filed, the Sheriff delivers the property to the plaintiff on the writ. A party who asserts a right to the property by his action and who fails to maintain his right to possession is required to pay the party entitled thereto the value of the property in addition to all legal costs, and fees *and* all damages sustained by reason of the issuance of the writ. Pa. R. Civ. P. 1073 (a) (2).

Plaintiffs, in their primary constitutional attack, contend that the above cited scheme of statutes and rules, on its face, operates to deprive them of their property

<sup>4</sup> See Pa. R. Civ. P. 1456.

<sup>5</sup> Plaintiffs' determination of the value of the property is not binding on the defendant. *Gaspero v. Gentile*, 160 Pa. Super. 276 (1947).

without due process of law. In so arguing plaintiffs place great reliance upon the Supreme Court's two recent decisions in *Snidach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Admittedly, there are broad and general procedural similarities between those cases and the instant case; however, both have centrally distinguishing and compelling facts which make them inapposite to the case before this Court. In *Snidach* the Supreme Court held that the Wisconsin prejudgment wage garnishment procedure violated fundamental principles of due process. The Court was understandably concerned with the compelling circumstances that an individual's wages were, without notice, indefinitely "frozen" pending the outcome of extended litigation. The Court emphasized the unique characteristic of wages as a "*specialized type of property presenting distinct problems in our economic system*". (Emphasis added) 395 U.S. at 340. To refer to wages as a "*specialized type of property*" is to underestimate the differences between wages and *all other types of property*. To refer to wages as "*presenting distinct problems in our economic system*" is to again underestimate the wholly unique problems incident to the seizure of wages as opposed to *all other types of property*. That was, for the purposes of *Snidach*, a sufficient reference. It is obvious that wages are more than mere property. They are the means or medium by and through which the necessities of life are purchased. To deny the prejudgment attachment of the medium or means of exchange is fundamental to the orderly workings of the economics of a complex society. Wages belong to the wage earner until they are pledged or committed to another. Because they are used in so many different ways and *because they have no practical substitute*, they should not and must not become the subject of prejudgment attachment without notice by a collateral creditor.

Because wages have no substitute and because they are each day used to obtain and meet the needs of that day, they are quite unlike the property here involved—stereo sets, rings, diamond watches, tables, stools and beds. The debtor can temporarily live without such prop-

erty while its *owner* seeks its return in kind. In *Snidach*, the creditor sought property to which he had no title and which, because of its unique character, was an irreplaceable necessity to the debtor. In contrast, the creditor here seeks specifically identifiable property to which he has reserved title and which he now seeks in order to prevent its loss, concealment or destruction. To eliminate a summary remedy which permits immediate repossession of secured property may well limit an aggrieved creditor to a worthless judgment with the attendant legal expense of obtaining it. *Snidach* involved a seizure grounded in a collateral claim on a promissory note where the creditor utilizing the garnishment procedure had no colorable interest whatsoever in the debtor's wages nor any interest in protecting or preserving his own property. The situation in *Snidach*, therefore, is readily distinguishable both factually and in principle from a replevin with bond action where a purchase money creditor is seeking, by way of legal process, to protect a validly created security interest in specific and identifiable property.

*Goldberg v. Kelly, supra*, is also inapposite. Like *Snidach*, compelling circumstances were paramount in the Court's analysis. "Welfare benefits" there were the equivalent of the "wages" earned in the *Snidach* case. The "benefits" were "money" in the hands of the recipient, the medium of exchange through which to obtain the day's needs. That it was "welfare" rather than "wages" is legally insignificant. The pre-hearing termination of welfare benefits deprived ostensibly eligible recipients of the very means by which to live for an indeterminate period of time. The governmental interest in preserving the uninterrupted receipt of welfare, considering the "brutal need" and destitute circumstances of the ostensibly eligible welfare recipients clearly outweighed countervailing fiscal and administrative considerations. Both *Snidach* and *Goldberg, supra*, must be understood in light of the particular facts before the Court and should not be read so as to automatically declare all provisional remedies regarding seizure of property unconstitutional regardless of the circumstances of

the particular case.\* See e.g. *Brunswick Corp. v. J. & P. Inc.*, 424 F. 2d 100 (10th Cir. 1969).

The term "due process of law" has been subject to varied interpretations and applications, but at the very least, it implies a process of weighing and balancing the various interests of the State and individuals in judging whether a particular procedural scheme or process satisfies rudimentary principles of fairness. Its application is not mechanical or a matter of formula, but rather is a process of "adjustment". *Joint Anti Fascist Committee v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J. concurring); *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1960); *Ng Fung Ho v. White*, 259 U.S. 276 (1922); *Communications Comm. v. W. J. R.*, 337 U.S. 265, 275 (1949); *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 372 (1856).

In the instant case, based upon the facts as stipulated, we find no irreparable harm or unconscionable hardships akin to those suffered in *Snidach*, *Goldberg* and the related cases cited by plaintiffs. Replevin with bond as prescribed by the Pennsylvania procedures and pursuant to a conditional sales contract authorizing repossession to protect a title or a valid security interest in our opinion is a situation in which prejudgment seizure of goods without a prior hearing is justified when followed by certain remedies and safeguards here involved. The plaintiffs have not shown that they suffered "grievous

\* A number of cases cited by plaintiffs are inapposite for the reasons set forth above. See e.g., *Goliday v. Robinson*, 305 F. Supp. 1224 (N.D. Ill. 1969) (Termination of public assistance grants); *McCaloy v. Carberry*, — Cal.2d —, 464 P. 2d 122, 83 Cal. Rptr. 666 (1971) (prejudgment wage attachment); *Jones Press, Inc. v. Motor Travel Servs. Inc.*, — Minn. —, 176 N.W.2d 87 (1970) (prejudgment garnishment of accounts receivable); *Larson v. Fetherston*, 44 Wisc. 2d 712, 172 NW 2d 20 (1969) (prejudgment garnishment of bank accounts); *Mills v. Bartlett*, 265 A.2d 39 (Del. Super. 1970) (prejudgment foreign wage attachment); *McConaghley v. New York*, 60 Misc. 2d 825, 304 N.Y.S.2d 136 (N.Y. County Civ. Ct. 1969) (retention of monies covering hospital expenses prior to determination of whether patient was impecunious).

loss" of any kind by reason of the temporary dispossession suffered here.<sup>7</sup> There is no finality accorded to the initial taking by the Sheriff here, nor is there the type of permanent stigma and disgrace which compelled the Supreme Court's decision most recently in *Wisconsin v. Constantineau*, U.S. (1971).

Plaintiffs, in arguing that the Pennsylvania procedure, on its face, violates due process, suggest that in *every* provisional remedy, there must be an evidentiary hearing prior to any seizure of property. However, one of the "fundamental requisites of due process of law is the *opportunity* to be heard" (Emphasis added). *Goldberg v. Kelly*, 397 U.S. at 267; *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Due process does not necessarily require a pre-seizure hearing in all cases, but rather demands that there be a *reasonable opportunity* to be heard and present defenses at some meaningful time and in some meaningful manner. See *Coffin Bros. v. Bennett*, 277 U.S. 29, 31 (1927); *Philips v. Commissioner*, 283 U.S. 589, 596-97 (1930); *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272 (1856); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Due process requires that there be an opportunity to present every available defense; but it need not be before the entry of judgment". *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932).

Under the Pennsylvania replevin with bond procedure the Sheriff, by service of the writ itself, gives the defendant named on the writ actual notice of the pendency of another's claim to a possessory interest in the specific property involved. After the property is taken, each defendant named in the writ is not automatically and forever dispossessed, nor is his adversary's right to possession or title then determined. The property is not forthwith delivered to the plaintiff on the writ. The Pennsylvania procedure is specifically designed so that the defendant, served with the writ, may within a sev-

<sup>7</sup> The property involved in this suit is clearly the garden variety kind of property and does not constitute the "specialized" kinds of property contemplated by the *Snidach* and *Goldberg* cases.

enty-two hour period<sup>8</sup> regain possession by filing a counter-bond equivalent to the bond obtained by the party initiating the action. Pa. R. Civ. P. 1076. Upon the filing of a counter-bond, the Sheriff is required to return the property to its original possessor pending a hearing to determine the plaintiff's right to title or possession. Adequate safeguards are built into the Pennsylvania procedure to avoid misuse or abuse of process. Rule 1073 (a) (2) specifically provides that "if the plaintiff fails to maintain his right to possession \* \* \* he shall pay to the party entitled thereto the *value of the property and all legal costs, fees and damages sustained by reason of the issuance of the writ.*" Thus, the debtor is made whole including damages for deprivation of the possession of the *unspecialized* property here involved.

It is apparent from the foregoing that Pennsylvania's procedure for replevin with bond provides the immediate opportunity to repossess the property taken. Thereafter, it is incumbent upon the original moving party to establish his superior right at a hearing at a subsequent time, failing which, the liabilities, including damages, attach as provided in the Pennsylvania rules. We cannot say that this procedure on its face is fundamentally unfair.

The State and creditor interests adverted to in *Snidach, supra*, are present in this case. Clearly, the State has a countervailing interest in summary seizure by replevin which is to be weighed against plaintiffs' right not to be temporarily deprived of their property prior to a hearing on the merits. Initially, summary seizure conserves State financial resources and administrative time in reducing the number of evidentiary hearings in a given lawsuit. Additionally, the State and creditor interests coincide in providing a protective remedy for those who have retained title to or security interest in specific and *unspecialized* property by authorizing procedures designed to prevent destruction, misuse or concealment of property by the debtor pending final disposition.

---

<sup>8</sup> Upon application to the Court, the time for filing a counter-bond may be extended by the Court for cause shown. Pa.R.Civ.P. 1076 (a).

Adequate remedies made available to creditor interests are necessary to the preservation and continuation of retail credit upon which vast numbers of people must necessarily rely in a constantly inflated economy. To deny the creditor an adequate and practical remedy may deny the debtor of his only means of obtaining many widely accepted, but costly, items, the enjoyment of which should not be reserved to the wealthy. The preservation of adequate remedies is also necessary to the maintenance of many large and small retail businesses without which our economy might well substantially decline to the detriment of the very individuals whom plaintiffs here seek to protect.\*

We have based our determination solely on the face of the statutes and rules in question and in light of the present record. Plaintiffs have failed to demonstrate on this record the fundamental unfairness of the Pennsylvania statutes and rules *per se* on due process grounds. We have not been asked to and do not consider the constitutionality of this procedure as it may be applied, used or misused in hypothetical circumstances of undue hardship not presently before the Court. We recognize the importance of not imposing procedural requirements upon the State other than those demanded by the rudimentary concepts of due process. *Goldberg v. Kelly*, 397 U.S. at 267. We hesitate to make such an imposition considering the presumption of constitutionality which clothes the Pennsylvania procedures involved on the present record.

Plaintiffs rely heavily upon *LaPrease v. Raymours Furniture Co.*, C.A. 70-Cv-16 (N.D. N.Y. July 30, 1970). The provisions of the statute there being considered and the record before the Court may well distinguish it from the instant case. The statutory scheme in *LaPrease* did not provide, as does the one before us, remedies to make the debtor completely whole by the award of all costs,

---

\* We can conceive situations where replevin may be employed to prevent spoilage of perishable goods wrongfully possessed where absent a summary seizure such goods would be lost. Undoubtedly, there may be many other circumstances where immediate action is necessary.

damages and fees. Additionally, the New York statute provided that the Sheriff *shall forcibly* enter. Pennsylvania's rules do not so provide; moreover, forcible entry was threatened in *LaPrease* whereas on our record there clearly was no forcible entry or threat thereof. Furthermore, in *LaPrease* the debtor alleged a meritorious defense and default was specifically denied. Interestingly, the *LaPrease* court distinguished the *Brunswick* case on the theory that a default had been admitted in *Brunswick*, but denied in *LaPrease*. Thus, the instant case, where default is not denied, is closer to *Brunswick* and on the theory advanced by the *LaPrease* court, we might well follow *Brunswick*. However, we need not and do not follow the theories of the *LaPrease* court. There may well be sufficient differences in the statutory procedures from those here involved. If not, we do not hesitate to state that we are in disagreement with *LaPrease* mainly due to what we consider to be misplaced reliance on the *Snidach* and *Goldberg* cases. We find ourselves in agreement with the analysis in *Fuentes v. Faircloth*, 317 F. Supp. 954 (S.D. Fla. 1970)<sup>10</sup> and *Brunswick Corp. v. J. & P. Inc.*, 424 F. 2d 100 (10th Cir. 1970).<sup>11</sup>

Aside from their principal contention regarding due process, plaintiffs additionally argue that the Pennsylvania replevin with bond procedures deprive low-income individuals of equal protection of the laws and that the statutes and rules violate plaintiffs' right to be free from unreasonable searches and seizures. We are not convinced or persuaded by plaintiffs' arguments on these points.

With respect to the equal protection argument, there is no need for a lengthy analysis based upon the record before the Court. Plaintiffs have *alleged* generally that

<sup>10</sup> We note that the Supreme Court has recently granted review of the *Fuentes* decision. See 39 U.S.L.W. 3359 (review granted Feb. 23, 1971).

<sup>11</sup> An additional problem raised in both *Fuentes* and *Brunswick, supra*, is whether plaintiffs by reason of their contracts have waived their rights. We have not been presented with evidence or arguments on this point and, therefore, do not reach this issue.

they are in poverty straits. Such allegations, if proved, might merit a more detailed consideration of the equal protection arguments. However, such allegations have not been proved—indeed the only specific evidence in the present record of the financial background of any of plaintiffs is that plaintiff Epps earns in excess of \$10,000 per year. Other than this, the record is silent. We are not presented with particularized evidence upon which we can make an intelligent judgment on this issue. See e.g. the evidence presented in *Swab v. Lennox*, 314 F. Supp. 1091, 1907 (E.D. Pa. 1970) and *Santiago v. McElroy*, 319 F. Supp. 284, 291 (E.D. Pa. 1970). Based upon the present record and absent such proof, we shall not engage in deciding hypothetical constitutional questions not placed before the Court in a concrete factual manner.

Plaintiffs' remaining contention generally stated is that based upon a broad reading of *Camara v. Municipal Court*, 387 U.S. 523 (1967) and *See v. City of Seattle*, 387 U.S. 547 (1967), Pennsylvania's replevin with bond procedures have authorized searches and seizures in violation of the Fourth Amendment. Assuming *arguendo* that the search and seizure provisions of the Fourth Amendment have not been waived by reason of the conditional sales contracts signed by plaintiffs in this case,<sup>12</sup> and further assuming that the proscriptions of the Fourth Amendment apply to summary civil process to satisfy debt,<sup>13</sup> we cannot find a violation upon the facts presented. In all the stipulated facts plaintiffs concede that each seizure, pursuant to a writ of replevin, was conducted in a peaceable manner. There were no threats or intimidation nor is there any evidence of a forcible entry. Pennsylvania's statutes and rules do not specifically authorize the use of force. The conduct herein complained of clearly "does not descend to the level of unreasonableness" which is the standard of the Fourth Amendment.

<sup>12</sup> But see *Fuentes v. Faircloth*, 317 F.2d 954, 956 (S.D. Fla. 1970). See Note 10, *infra*.

<sup>13</sup> But see *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 59 U.S. 272, 285 (1856); *Fuentes, supra*, at 954.

See *Wyman v. James*, U.S. (1971), 39 U.S. L.W. 4085, 4087 (U.S. Jan. 12, 1971). See also *Terry v. Ohio*, 392 U.S. 1, 9 (1968); *Elkins v. United States*, 364 U.S. 206, 222 (1960). There is nothing in the instant record to indicate that the seizures were other than purely civil in nature, seeking property covered by lawfully created security interests. There is no suggestion that the seizures were made at unreasonable hours or in a forceful or reprehensible manner. These proceedings clearly are not quasi criminal in nature nor are they in aid of any criminal proceeding. On the basis of the facts before us, we are not convinced of the applicability of the Fourth Amendment to the proceedings here in issue nor, assuming it does apply, are we satisfied that the seizures were unreasonable. Therefore, we shall deny plaintiffs' motions for summary judgment and shall grant defendants' motions for summary judgment.

ORDER—Filed March 31, 1971

[File Endorsement Omitted]

AND NOW, this 31th day of March, 1971, IT IS ORDERED that plaintiffs' motions for summary judgment are DENIED; IT IS FURTHER ORDERED that defendants' motions for summary judgment are GRANTED.

/s/ J. Cullen Ganey  
Circuit Judge

/s/ E. Mac Troutman  
District Judge

/s/ John B. Hannum  
District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-2592

[File Endorsement Omitted]

MITCHELL EPPS, PAUL and ELLEN PARHAM, and ROSA BELL ANDREWS WASHINGTON, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

AMERICO V. CORTESE, ESQUIRE, individually and as Prothonotary of the Court of Common Pleas of Philadelphia County, 288 City Hall, Philadelphia, Pennsylvania; and WILLIAM M. LENNOX, individually and as Sheriff of Philadelphia County, Third Floor, City Hall, Philadelphia, Pennsylvania; LEWIS WASHINGTON, 4228 West Girard Avenue, Philadelphia, Pennsylvania; GOVERNMENT EMPLOYEES EXCHANGE CORPORATION, Kaign Avenue and Crescent Boulevard, Pennsauken, New Jersey; and SEARS, ROEBUCK AND COMPANY, Adams and Whitaker Avenues, Philadelphia, Pennsylvania; on behalf of themselves and all others similarly situated, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed April 8, 1971

Notice is hereby given that plaintiffs PAUL and ELLEN PARHAM and ROSA BELL ANDREWS WASHINGTON hereby appeal to the Supreme Court of the United States on behalf of themselves and all others similarly situated from the order of the court entered in the above-captioned matter on March 31, 1971.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ David A. Scholl

/s/ Harold I. Goodman

/s/ Harvey N. Schmidt

/s/ Laurence M. Lavin  
Attorneys for Plaintiffs  
Community Legal Services, Inc.  
313 South Juniper Street  
Philadelphia, Pennsylvania 19107

DATED: April 5, 1971

SUPREME COURT OF THE UNITED STATES

No. 6966, October Term, 1970

MITCHELL EPPS ET AL., APPELLANTS

v.

AMERICO V. CORTESE ET AL.

ON CONSIDERATION of the motion of the appellants for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

May 24, 1971

SUPREME COURT OF THE UNITED STATES

No. 6966, October Term, 1970

MITCHELL EPPS ET AL., APPELLANTS

v.

AMERICO V. CORTESE ET AL.

APPEAL from the United States District Court for the Eastern District of Pennsylvania.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for oral argument immediately following No. 6060.

May 24, 1971

